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SECOND DISTRICT COURT - FARMINGTON

DAVIS COUNTY, STATE OF UTAH

LAUREN R. MARSH,	)	
	)	
Petitioner,	)	CASE NUMBER 184701031
	)	
vs.	)	WITH KEYWORD INDEX
	)	
KIRK RUSSEL MARSH,	)	
	)	
Respondent.	)	

COURT'S BENCH TRIAL RULING

AUGUST 16, 2019

HONORABLE MICHAEL EDWARDS

APPEARANCES:

FOR THE PETITIONER:	MR. DOUGLAS D. ADAIR
FOR THE DEFENDANT:	MR. D. MICHAEL NIELSEN

1 LAYTON, UTAH; AUGUST 16, 2019

2 HONORABLE MICHAEL EDWARDS

3 (Transcriber's note: Identification of speakers may
4 not be accurate with audio recordings.)

5 (TIME 7:10:05)

6 **THE COURT:** All right. Once again on the record,
7 ladies and gentlemen, in the case of Marsh versus Marsh, case
8 number 184701031.

9 We have had the bench trial today and tomorrow -- or
10 yesterday and today, pardon me. And the Court has had
11 opportunity to carefully consider all the evidence. I
12 appreciate the parties accommodating me as I've taken the time
13 to consider everything now and to prepare findings and
14 conclusions to the end that the parties can have finality and
15 move forward with their lives.

16 Before I start my formal findings and conclusions, I
17 just -- I know that Mr. Marsh isn't present. I find that's
18 regrettable, but I -- no matter what I do, that's not going to
19 be the case. And so hope you'll convey to him, both his
20 family and Mr. Nielsen (sic), that -- and I'm speaking to both
21 of you, essentially, that I appreciate what you've told me. I
22 understand what you've told me.

23 I've had the opportunity to take it in and consider
24 it carefully. And I hope to formulate an order that will be
25 in the best interest of your children and that, frankly, will

1 serve both of you best in that way. Because if your children
2 are being taken care of, then, in the end, as a parent, you've
3 succeeded to a very real extent. And so I'd just encourage
4 both of you to work together.

5 I know that this won't always be easy -- at the same
6 time. This situation is, frankly -- and you're talking to a
7 person who's seen a lot of difficult circumstances for people,
8 both in the military and, you know, as a -- an attorney and
9 now as a judge, I see people, sometimes, go through some of
10 their worst moments.

11 But I want you to know that I think it's great, all
12 the wonderful things you've done for your children. I think
13 it's great that you have these wonderful children to raise.
14 And I hope that you'll work together for their best interests.
15 I'm trying to provide a structure for that, but I hope that
16 you'll apply this with my best intent, of course, with your
17 best intent. And instead of looking for the faults or the
18 flaws in it, which doubtless it will have -- there's no
19 perfect human endeavor -- I hope that it will provide what's
20 needed to be as good as can be for your children, given what
21 is, indeed, a very difficult circumstance, to say the least.
22 And I wish you all God's blessing and help in that process.

23 That said, these are the Court's findings of fact.
24 And, as you know, counsel, sometimes it's hard to parse out
25 findings and conclusions that are sometimes overlapping. So

1 you'll see some of that, and you're welcome to make me look
2 good and prepare it in a way -- and work with each other to
3 prepare it in a way that makes sense, given the Court's
4 findings and conclusions. And, of course, I'm more than happy
5 to take your input or questions on these and amend them, as
6 needed, if I have made any mistakes. Again, not claiming
7 infallibility.

8 So, first, as to the findings of fact, very
9 basically, one, jurisdiction and venue of the -- in this court
10 are proper. Of course, some of this might not be necessary
11 because I've already granted a bifurcated decree, so really
12 what we're having counsel prepare is findings, conclusions,
13 and I guess -- what would you call it? A decree of divorce
14 resolving all other issues, or however you want to put that.
15 You can title it however you want, but --

16 Number two: Both parties have submitted to the
17 Court's jurisdiction.

18 Number three: Utah is the children's home state under
19 the Uniform Child Custody Jurisdiction Enforcement Act, or the
20 UCCJEA. There are no other proceedings pending related to the
21 parties' minor children.

22 Number five: The parties were married on May 31st,
23 2008, in San Diego, California.

24 Number six: The parties have three children
25 together, all three of them being what are actually sweet,

1 beautiful little daughters. I can tell from all the testimony
2 and the pictures I've been presented. The first is N.R.M.,
3 age eight; the second is I.L.M., age seven; and the third is
4 I.A.M. -- I thought it was kind of cool that her initials are
5 "I am." That's pretty neat. Anyway, so the Jews might not
6 like that. But, anyway, who is age four.

7 Number seven: The -- during the parties' marriage,
8 petitioner was the primary caretaker of the parties' minor
9 children.

10 Number eight: Petitioner stopped working full-time
11 when she was pregnant with the parties' first child, about
12 December of 2009 -- according to the testimony -- and was a
13 homemaker from that point until the parties were separated by
14 respondent's arrest.

15 Nine: During the marriage, both parties were
16 involved in the care of their children and both parties had
17 been caring and devoted parents.

18 Number 10: Before his arrest, respondent was an
19 involved father who was affectionate to the children and had a
20 strong bond with them. He read to them, he played with them,
21 and when he was not working, he assisted petitioner with the
22 care of the children.

23 Number 11: Respondent was involved in serious
24 financial criminal activity between about 2012 and 2017. The
25 activity involved, at a minimum, fraudulent loans, including

1 one to a business the respondent acquired an interest in.

2 Number 12: Respondent's criminal illegal business
3 activity created a need for cash flow. The uncontroverted
4 evidence is that this caused respondent to dissipate marital
5 assets as follows:

6 A: Retirement account in the amount of 20- to
7 \$25,000 for respondent's attorney's fees.

8 B: A withdrawal from the retirement account for a
9 similar amount, though respondent wasn't sure of the exact
10 amount.

11 C, the value of the parties' Honda Odyssey minivan,
12 and that the Court noted that the replacement for that van --
13 which, according to Mr. Chris Waddell's testimony -- the
14 replacement value was over \$20,000 for that vehicle. Was used
15 as collateral for one of respondent's loans. This led to the
16 van -- which petitioner thought was owned free and clear of
17 any lien -- being repossessed in November of 2017, shortly
18 before defendant's sentencing.

19 Number 13: The Court finds that it is reasonable to
20 conclude that respondent dissipated at least \$60,000 in
21 marital assets, given the preceding findings.

22 And just to be transparent, counsel, how I reached
23 that is the retirement account withdrawal. I took the lower
24 of the two numbers that he testified to was 20,000. He said a
25 similar withdrawal -- when he had said 20- to 25,000 before, I

1 just took the lower of those two, took 40, and then I took
2 \$20,000, which I think is a low estimate of the value of the
3 Honda Odyssey minivan, given the testimony that was provided.

4 I agree, Mr. Nielsen, that it's not the most
5 evidence, but nonetheless, I think that my estimate is a
6 conservative one.

7 Thus, that he dissipated at least 60,000 in marital
8 assets, and that's definitely a fact from all of the evidence
9 that was presented to the Court.

10 Next, number 14: Respondent was arrested for serious
11 federal financial crimes: identity theft, fraud, et cetera, in
12 July of 2017.

13 Next, number 15: Respondent was temporarily released
14 from federal custody in August of 2017 and was allowed to be
15 under the supervision of his sister until he was imprisoned
16 for his crimes in early January of 2018.

17 Number 16: While respondent was temporarily released
18 from custody, petitioner facilitated his having weekly parent
19 time with the parties' minor children. From the testimony
20 presented, this was about once per week. Petitioner also
21 facilitated respondent seeing the children for the
22 Thanksgiving and Christmas holidays that year.

23 Number 17: Petitioner moved with the children from
24 Northern Virginia to North Salt Lake City, Utah, in late
25 December of 2017.

1 Number 18: Respondent went into federal prison camp
2 in Cumberland, Maryland, in early January of 2018. Respondent
3 is still in that facility and will be for an unknown amount of
4 time. His current release date listed on the prison's website
5 is in 2023, but respondent testified that because of changes
6 in federal law, he may be released sooner. Bottom line is,
7 the Court is not really aware of exactly when he'll be
8 released. And I don't think anybody who testified was able to
9 say so either.

10 Number 19: Since respondent's incarceration in the
11 prison camp, petitioner has facilitated phone calls between
12 respondent and the three minor children. For the time the
13 Court is considering, that has been done twice each week.
14 Petitioner feels that this is too much, but respondent feels
15 that it is appropriate. The Court will discuss that a little
16 bit more later.

17 Number 20: Respondent has taken the minor children
18 from Utah to Maryland once each year since respondent has been
19 incarcerated. There was a lot of testimony about these
20 visits. The Court finds that, while it may not be intentional
21 on the part of petitioner or her family members, she has angst
22 or anxiety with the visits, and the children -- especially the
23 oldest, N.R.M. -- sense petitioner's feelings about the
24 visits. This causes them to have anxiety about the visits.

25 The Court also finds that this is exacerbated by

1 conflict between the parties in the presence of the children.
2 While this will hopefully be reduced because the divorce
3 matter will now be resolved, the Court concludes that it would
4 be best for someone other than petitioner or her family
5 members to facilitate respondent's parent time.

6 Twenty-one: Respondent's parents have appeared
7 before the Court and expressed their willingness to facilitate
8 respondent's parent time. They convinced the Court that they
9 have the best interest of the children at heart and will
10 comply with court orders, and place the well-being of the
11 children first.

12 Twenty-two: While respondent is in federal prison,
13 he can communicate with people outside the prison by U.S.
14 Mail, a messaging system similar to email, and by phone calls
15 from respondent to the person outside the prison. Respondent
16 has regularly communicated with petitioner and the minor
17 children by these means throughout his incarceration.

18 Twenty-three: The Court previously granted a
19 bifurcated decree of divorce. That order was entered by the
20 Court on May 14th, 2019.

21 Number 24: Petitioner's current income is \$1,803 per
22 month. That's simply using her stated income of \$26 per hour
23 at an average of 16 hours per week.

24 Number 25: Respondent's current income is about \$60
25 per month -- according to his testimony -- for work he does

1 while incarcerated. While respondent made more than \$100,000
2 per year up through the time he was fired from his job for his
3 criminal activity, the Court does not find that it is
4 equitable to impute income to respondent in this amount. And
5 it is impossible for the Court to conclude what his earning
6 capacity will be when he is released from prison with federal
7 felony convictions. The Court concludes he will not be able
8 to work in the area he was working in because of those
9 convictions.

10 Twenty-six: Respondent cannot benefit from tax
11 deductions while he is incarcerated. Furthermore, the Court
12 will take these deductions into consideration in making
13 equitable financial orders for the parties.

14 Someone have a question? I heard something -- all
15 right.

16 Twenty-seven: The Court finds that petitioner's
17 documentation establishes a need of \$1,000 per month for
18 alimony.

19 Twenty-eight: The Court finds that respondent does
20 not currently have the income or assets to have the ability to
21 pay alimony.

22 Twenty-nine: The parties bought a home during the
23 marriage and they gained equity in the home during the
24 marriage.

25 Thirty: The home was encumbered by a first mortgage

1 and a second mortgage or home equity line of credit, or
2 otherwise known as a HELOC. The Court finds that these
3 mortgage balances were not appreciably impacted by
4 respondent's fraudulent activity.

5 Thirty-one: In August of 2017, respondent conveyed
6 title in the marital home to petitioner on the advice of
7 counsel.

8 Thirty-two: The marital home was sold by petitioner
9 after respondent's arrest. The remaining equity in the
10 marital home is \$120,000.

11 Thirty-three: There are no marital debts remaining.

12 Thirty-four: The parties, particularly respondent,
13 have debts in their own names. Respondent's debts include a
14 very large restitution order in his federal criminal case.

15 Thirty-five: The Court does not find evidence of
16 financial arrears in this case where petitioner has been
17 receiving extensive financial assistance from her family and
18 respondent's family since respondent was arrested.

19 Thirty-six, neither party's family is requesting
20 reimbursement for the financial assistance they have provided
21 to petitioner.

22 And 37, while respondent -- excuse me. When
23 respondent is released from prison, he intends to spend as
24 much time as possible with the minor children; however, he
25 does not know exactly what he will be doing in that regard.

1 That's the end of the findings of fact that I've
2 prepared. Do either counsel have any questions or
3 clarifications you'd like to request before I move forward?

4 **MR. ADAIR:** Not at this point, Your Honor.

5 **THE COURT:** Mr. Nielsen?

6 **MR. NIELSEN:** No, Your Honor. Give me just a second,
7 though.

8 **THE COURT:** I understand, yeah. I talk fast and
9 writing hurts after a long day; right?

10 **MR. NIELSEN:** Life's coming back. All right.

11 **THE COURT:** I can pause a little longer if you --

12 **MR. NIELSEN:** Nope. We're okay now.

13 **THE COURT:** All right. From the foregoing findings
14 of fact, the Court makes the following conclusions of law.
15 First, as to legal custody. The Court concludes that it is in
16 the best interest of the children that the parties share joint
17 legal custody of their minor children.

18 Under Utah Code Annotated Section 30-3-10, subsection
19 1(b), as in boy, there is a rebuttable presumption that joint
20 legal custody is in the best interest of the children, except
21 in the special cases or situations enumerated in that code
22 section. The Court concludes that one of these, quote,
23 unquote, special cases -- excuse me, that none of these
24 special cases have been proven by a preponderance of the
25 evidence in this case. Specifically, there's no evidence of

1 domestic violence. Second, there's special physical -- excuse
2 me. The element of special physical or mental needs of a
3 parent or child making joint legal custody unreasonable is not
4 applicable in this case.

5 I note there was talk about that and argument made
6 about that, but I conclude that there's nothing so difficult
7 about the situation for the parents or the children that the
8 parties can't share joint legal custody.

9 Third, while there is a large physical distance
10 between the parties, and, of course, the respondent and the
11 children, the Court finds that the issues the Court is
12 granting joint decision-making authority on are such that
13 communication by the parties about these subjects in question
14 is not unreasonable -- or it won't be unreasonable.

15 D: The Court doesn't find that any other factor
16 would cause the Court to conclude that this is a special case
17 that should keep the Court from ordering joint legal custody.

18 Now, let me proceed next under the analysis of the
19 factors under Utah Code Section 30-3-10.2, subsection (2) as I
20 explain why I've concluded that joint legal custody is in the
21 best interest of the children and that the presumption hasn't
22 been rebutted.

23 First, the Court concludes that the physical,
24 psychological, and emotional needs and development of the
25 children would benefit from joint legal custody. Over the

1 entire lives of these three young girls, it will be for their
2 benefit to have both parents give meaningful input about the
3 major decisions of their lives.

4 And with that, to further clarify, what I'm saying
5 is, my life experience as a judge, as an attorney, as an
6 ecclesiastical leader, as a father, and now as a grandfather,
7 is that it's extremely important for these children -- these
8 three beautiful little girls to have a great bond between both
9 of their parents. And I think we cut one parent out of the
10 decision-making authority at great peril to them. And that's
11 why I'm not doing it. It's probably the biggest reason I'm
12 not doing that. I think both parties need to have meaningful
13 input into the major decisions about the children. And you'll
14 find that I'm narrowly tailoring this so that it won't be
15 unduly burdensome or problematic for the petitioner.

16 The Court concludes that -- this is the next element.
17 The Court concludes that each of these parties has
18 demonstrated the ability to give first priority to the welfare
19 of the children and reach shared decisions in each child's
20 best interest.

21 I haven't heard anything that makes me think that
22 either of these parties will really appreciably disagree about
23 key decisions in these children's lives. I think their
24 values, religious beliefs, et cetera, are well-aligned.

25 The Court also hopes that as the parties practice

1 this they will get even better at their co-parenting and --
2 and their joint decision-making as I'm ordering it.

3 Next, the Court concludes that both parties are
4 capable of encouraging and accepting a positive relationship
5 between their children and the other parent. Both parties'
6 testimony demonstrated that this happens, and the Court wants
7 to encourage the parties to continue this for the sake of
8 their children.

9 I want to say here that I really appreciate the
10 efforts, particularly of the petitioner, in going out of her
11 way to say positive things about the respondent and to try to
12 help encourage the children to love their father. And I
13 believe that both parties will do that in the future, as well.

14 Next, the Court concludes that both parties
15 participated in raising the children before respondent's
16 incarceration.

17 The Court further concludes that, but for
18 respondent's incarceration, he would be regularly caring for
19 the children now and that he will most likely resume that when
20 he is released. Joint legal custody will facilitate a smooth
21 transition into that scenario when he is released. That's a
22 specific conclusion of the Court.

23 Next, the Court concludes that while both parties
24 have been imperfect in this area, they have the willingness,
25 maturity, and ability to protect the children from conflict

1 that might arise between them. This is especially true given
2 the structure the Court will provide for decision-making and
3 parent time. Here again, the parties haven't been perfect.
4 There has been some conflict in the presence of the children,
5 but the parties have learned from that and will do better
6 moving forward.

7 Next, prior to respondent's incarceration, the
8 parties' co-parenting was excellent. It has been less so
9 since his incarceration, but the parties have been learning
10 how to work with this difficult situation and will do better
11 in the future. They both want to put what is best for the
12 children first, and I applaud them in that effort.

13 Next, while communication with respondent is somewhat
14 difficult in the federal prison camp, the Court concludes that
15 the evidence was that petitioner can communicate with the
16 respondent through the prison's electronic message system, by
17 U.S. Mail, and by phone calls from respondent to petitioner.
18 These means are sufficient for the respondent to give
19 meaningful input on the major decisions in the children's
20 lives.

21 So after considering all of those factors, the Court
22 concludes that the parties should share joint legal custody
23 with the following terms.

24 A: Petitioner is to make all the minor or day-to-day
25 routine decisions concerning the minor children until

1 respondent is released from custody. After respondent is
2 released from the custody, the parent who has the children in
3 his or her custody at the time will make these minor decisions
4 and provide notice to the other parent where necessary or
5 prudent, within a reasonable amount of time.

6 B: The parties are to share joint decision-making
7 authority on all major medical, dental, orthodontic,
8 psychiatric, educational, extracurricular -- excuse me --
9 extracurricular activities or religious decisions. That's
10 sort of the list I formulated --

11 **MR. NIELSEN:** Could you repeat those, Judge?

12 **THE COURT:** Sure. And -- and I'm open to counsel's
13 suggestion. What I was trying to formulate here is what I
14 consider to be the real major decisions in a child's life.
15 What I said is, major medical, dental, psychiatric,
16 orthodontic, educational, extracurricular activities, or
17 religious decisions.

18 While respondent is incarcerated, petitioner is to
19 have tiebreaking decision-making authority after a full and
20 fair discussion with respondent, with both parties trying in
21 good faith to reach agreement on the pending issue.

22 In other words, what I'm getting at, on the part of
23 the petitioner, is that I don't want her simply to say, well,
24 I have decision-making -- final tiebreaking authority, so I
25 just make all the decisions. It's got to be, if that

1 authority -- the tiebreaking authority is used, it's got to be
2 after a full and fair discussion of the issue with the
3 respondent, with a good faith attempt to resolve the issue and
4 compromise for the best interest of the children.

5 **MR. NIELSEN:** Would the Court mind waiting a minute?

6 **THE COURT:** Sure.

7 **MR. NIELSEN:** This didn't used to happen. I will be
8 ordering a transcript, but I still need to take notes.

9 **THE COURT:** Understood. I understand.

10 **MR. NIELSEN:** To tell my client.

11 **THE COURT:** Gravity and time are formidable foes.
12 They're both going to win eventually.

13 **MR. NIELSEN:** Arthritis is the worst, though.

14 **THE COURT:** All right. Let me know when you're
15 ready.

16 **MR. NIELSEN:** Thank you, Your Honor. I'm ready.

17 **THE COURT:** All right. C: After respondent is
18 released from custody, the parties shall use a different
19 dispute resolution mechanism. First, they will discuss the
20 matter themselves, trying in good faith to resolve the problem
21 at hand.

22 Second, they will consult with an expert in the area
23 in question to get help resolving the disputed issue -- again,
24 that's if they're unable to do it themselves. Each of these
25 steps is only as needed if they can't resolve the issue at one

1 of the lesser steps.

2 Third, they will attend mediation to resolve the
3 issue before bringing it before the Court unless it involves
4 an emergent need for the child in question. Of course, each
5 party is to pay for half of the costs of any such mediation.

6 Finally, they can bring unresolved matters before the
7 Court.

8 It's important that we make this part of the parties'
9 parenting plan so that they both keep the habit of resolving
10 any disputed issues at the lowest level possible, again, with
11 an eye toward resolving them for the best interest of the
12 children.

13 **MR. ADAIR:** Your Honor, I have a question about this.
14 I think that in the joint legal custody statute, we have a
15 situation that she's going to be the primary -- or the
16 custodian parent of the children. So with that, I think that
17 she needs to have the authority to choose the residence and
18 the continuing tiebreaking authority with this custodial
19 arrangement.

20 **THE COURT:** Any disagreement with that, Mr. Nielsen?

21 **MR. NIELSEN:** I'm not following.

22 **MR. ADAIR:** Well, what --

23 **MR. NIELSEN:** This is after release --

24 **MR. ADAIR:** Yes.

25 **MR. NIELSEN:** -- from incarceration?

1 **MR. ADAIR:** Yeah.

2 **THE COURT:** Right.

3 **MR. ADAIR:** She still has the tiebreaking authority,
4 I assume, at that point, after that dispute resolution
5 mechanism?

6 **MR. NIELSEN:** I think the Court's intent was try to
7 resolve, consult with an expert, attend mediation, unless it's
8 an emergent situation.

9 **THE COURT:** Right.

10 **MR. NIELSEN:** Pay one half each, and if they can't
11 resolve, then they can bring it before the Court.

12 **THE COURT:** And I think that's true. As far as a
13 practical matter, as far as how I see that, is that she would
14 make the tiebreaking decision. It'd essentially be up to the
15 respondent to take legal action (unintelligible), if
16 necessary.

17 **MR. ADAIR:** The -- the issue we have, Your Honor, is
18 she's the residential parent of the children, caring for the
19 children in all of those issues. So I think it's very
20 appropriate that she has the tiebreaking vote in that
21 situation.

22 **MR. NIELSEN:** My response to that would be that I
23 agree with the Court's tie break -- or the Court's dispute
24 resolution on all that were listed above; however, I do see
25 Mr. Adair's point about residential. And so the Court may

1 want to include that language that she has the tiebreaking
2 ability for that so that he can't put at issue where they live
3 without putting that before the Court --

4 **MR. ADAIR:** Well --

5 **MR. NIELSEN:** -- but I don't see a need for the
6 others to join it.

7 **MR. ADAIR:** The concern here, Your Honor, is about
8 rights and responsibilities. We -- the evidence about where
9 he's going to be is speculative, so she's in a situation --

10 **MR. NIELSEN:** That's right.

11 **MR. ADAIR:** -- having all of the responsibilities for
12 the children. She's the residential parent of the children.
13 She's going to need the ability to make -- have tiebreaking
14 decisions in those situations to get a passport for the
15 children, to do different things that need to be done. I --
16 we're concerned about her having the responsibilities of
17 caring for the children and having continuous disputes without
18 a clear tiebreaker. So I -- I think that that's really
19 important in this case. That would be my argument.

20 **THE COURT:** Well, if that's what the statute requires
21 to include, then I would incorporate that, definitely. I
22 just -- what I want the parties -- the situation I'm trying to
23 avoid is that too often we have a primary physical custody
24 arrangement, the parent with primary physical custody decides
25 that because they have the tiebreaking authority, they have

1 all authority, and they just make all the decisions. And
2 that's the situation I'm trying to avoid. And that's why I'm
3 putting these admonitions in there.

4 Of course, I want my order to comply with all
5 statutes, and so insofar as that needs to be amended to
6 comport with the statute, I'm definitely -- that's the intent
7 of the Court.

8 And that was my final statement about joint legal
9 custody, actually, was that counsel are to assist the parties
10 in formulating a parenting plan that contains any other
11 details the parties choose to include in their parenting plan,
12 you know, referring to the advisory guidelines and the joint
13 physical custody -- excuse me, the joint legal custody
14 statute.

15 Does that make sense?

16 **MR. NIELSEN:** Yes. When you say counselors, do you
17 mean between the two parties?

18 **THE COURT:** Between -- yes. Between two counsel --

19 **MR. ADAIR:** This order doesn't place any ability
20 (sic) on her ability to move? She's the primary residence of
21 the children --

22 **THE COURT:** I'm going to talk about physical custody
23 next. So --

24 **MR. NIELSEN:** So the counselors would assist the
25 party in formulating in this parenting plan.

1 **THE COURT:** The two of you is what I meant, is the
2 attorneys help the other -- parties work together in
3 formulating a parenting plan. In other words, I didn't think
4 it was appropriate for me to dictate every last term or
5 provision of a parenting plan, but --

6 **MR. ADAIR:** Understood, Your Honor.

7 **MR. NIELSEN:** Understood.

8 **THE COURT:** -- but I think counsel can reach that end
9 with the structure that I'm providing. That was my hope.
10 Any further discussion about that needed?

11 **MR. ADAIR:** No.

12 **THE COURT:** All right. Physical custody. First, the
13 Court concludes that the statutory factors in Utah Code
14 Annotated 30-3-10.2 mandate that the Court conclude that the
15 only reasonable physical custody order, given the respondent's
16 lengthy incarceration, is to award primary physical custody of
17 the minor children to petitioner, subject to respondent's
18 rights to reasonable parent time.

19 Next, since the parties do not currently know where
20 respondent will live when he is released from prison, the
21 Court finds that its current primary physical custody award is
22 made subject to modification by the Court if respondent files
23 a petition to modify within one year of his release from
24 prison. So long as a petition to modify is filed within that
25 time, respondent will not have to prove that his release from

1 prison and subsequent relocation, if applicable, was not
2 foreseeable when the Court enters its order.

3 In other words, I don't want to place the respondent
4 in a catch-22 where he can't modify the current order because
5 of the argument that his release was foreseeable. In other
6 words, I can't make any further order than I'm making now with
7 primary physical custody for the petitioner, and I can't make
8 findings about what's going to happen with respondent when he
9 gets released, and so I feel like I have to leave that door
10 open for modification in order to be equitable to the parties.
11 And --

12 **MR. NIELSEN:** Can I ask something, Judge?

13 **THE COURT:** Please.

14 **MR. NIELSEN:** Could we word that in such a fashion
15 that it provides him an opportunity -- in other words, I'm not
16 familiar with the federal system. When he gets out, does he
17 go on probation?

18 **MR. ADAIR:** Yeah. There will be some limitations as
19 to where he can be.

20 **MR. NIELSEN:** Yeah. Because it shouldn't be released
21 from custody; it should be at such time as he's able to
22 relocate to where the children are.

23 **MR. ADAIR:** And, Your Honor, I think the Court --
24 it's -- I think the Court's already phrased it well.

25 **MR. NIELSEN:** Well, but if he's -- if he's out, but

1 he can't move, then he's limited for one year. Well, I don't
2 know how probation goes. But that's something the Court ought
3 to take into consideration.

4 **MR. ADAIR:** I think the question is, what does the
5 judge mean by custody? Is that incarceration or
6 (overtalking) --

7 **MR. NIELSEN:** Well, that's why I say, I -- I think it
8 ought to be when he's free of the encumbrances that would
9 prohibit him from relocation.

10 **THE COURT:** The problem is, I don't --

11 **MR. ADAIR:** Well, and the question becomes, how long
12 do we leave litigation open in this case? And I think --

13 **THE COURT:** That becomes --

14 **MR. ADAIR:** -- the one-year imposed (overtalking) --

15 **MR. NIELSEN:** Because the Court's intent is just
16 that.

17 **THE COURT:** Sorry?

18 **MR. NIELSEN:** I say, your intent is just that, to
19 leave it open and give him an opportunity.

20 **THE COURT:** I understand the problem, but I don't
21 know how long he'll be on federal probation or anything like
22 that. It could be years. And --

23 **MR. NIELSEN:** Well, but that's not the issue. If
24 he's under -- if he's on federal probation, but he's allowed
25 to leave that jurisdiction and come to Utah, then that's one

1 thing. But if that probation includes, you can't travel to
2 where your kids are and live there, then the Court's not
3 providing him an opportunity and that goes against what the
4 Court's intent is.

5 **MR. ADAIR:** But the issue is, the Court has already
6 made an accommodation. And there's a procedure set forth in
7 Utah law. And I would also note that there's a different
8 standard for parent time. It's not the same standard under
9 Utah law and custody. It doesn't require -- there's several
10 cases -- substantial change of circumstances. So we don't
11 agree with the argument that that is a reasonable remedy to
12 deal with that and --

13 **MR. NIELSEN:** Well, Your Honor --

14 **MR. ADAIR:** -- I don't think it's fair to her to
15 leave this up in the air forever. It needs to be --

16 **MR. NIELSEN:** Nor do I, and I agree. But the Court's
17 intent here -- if I understand the Court's intent -- is he's
18 going to get out. And when he gets out, I want to provide him
19 an opportunity, if he can, at that point, resume his time with
20 his children and resume his parental duties as he had before,
21 he should have that opportunity. Mr. Adair's speaking about
22 cutting that opportunity off at the knees if he can't go and
23 live where the kids are because that's what's going to be
24 required.

25 **MR. ADAIR:** Well, and we haven't heard what the

1 parent time order is yet, so --

2 **MR. NIELSEN:** Well, I -- I don't find that that
3 matters at all.

4 **THE COURT:** Well, so the Court's intent is this. The
5 Court is -- to clarify things, I see the quandary here. I
6 would modify what I said -- or what I said -- announced as my
7 decision earlier. His petition to modify has to be filed
8 within one year from the time that he's able to relocate.

9 **MR. NIELSEN:** And I would ask that to be, relocated
10 where the children are.

11 **THE COURT:** Well --

12 **MR. NIELSEN:** I mean, I don't know where she's going
13 to be living at that point, either.

14 **THE COURT:** I'm not going to further limit it. I
15 think that it's clear what I'm intending. In other words,
16 it's going to be up to him whether or not he relocates. He
17 even testified that if he could choose, he would, but he
18 doesn't know if he'll be able to, so I --

19 **MR. NIELSEN:** Okay.

20 **THE COURT:** -- I think that's as good as I'm going to
21 be able to get it for you, Counsel.

22 **MR. NIELSEN:** And is the Court willing to discuss
23 making that longer than one year?

24 **MR. ADAIR:** Well, no. The Court's already ruled --

25 **THE COURT:** I -- that's my ruling. I think that's --

1 **MR. NIELSEN:** Thank you.

2 **THE COURT:** I appreciate the argument, Counsel.
3 That's the ruling.

4 **MR. NIELSEN:** All right.

5 **THE COURT:** Respondent's parent time. First, given
6 the physical distance between the parties, the Court awards
7 respondent parent time pursuant to Utah Code Annotated Section
8 30-3-37. However, given the facts of this case and the
9 petitioner's move to Utah being made necessary by respondent's
10 criminal acts, respondent is to pay the cost for his parent
11 time with the minor children.

12 Second, given respondent's incarceration, he is not
13 capable of exercising all of the time that is allotted to him
14 by Utah Code 30-3-37. Frankly, he's not capable of doing it
15 all -- at all on his own. However, the Court concludes that
16 respondent is entitled to two in-person visits per year while
17 he is incarcerated. One visitation period will be for two
18 weeks each summer. The other will alternate between the
19 Thanksgiving and winter school recesses, you know, every other
20 year, as arranged by the parties.

21 Third, for the reasons stated in the Court's findings
22 of fact, respondent's parents are to facilitate respondent's
23 parent time by providing the transportation, care, housing,
24 and supervision of the minor children for these parent time
25 periods.

1 Fourth, once respondent is released from prison, he
2 is to resume the 30-3-37 parent time with the caveat that he
3 is to do so with the assistance of a qualified reunification
4 counselor.

5 Mr. Adair, you had an acronym for it on --

6 **MR. ADAIR:** AFCC.

7 **THE COURT:** There you go. AFCC-qualified
8 reunification counselor, who will provide assistance and
9 direction to the parties as to whether or not a break in
10 parent time schedule is needed, and, if so, what the schedule
11 should be. The parties are to follow that schedule -- that
12 reunification schedule, if you will.

13 **MR. NIELSEN:** Does the Court know anyone that the
14 Court has in mind?

15 **THE COURT:** I --

16 **MR. NIELSEN:** The only one I know is Ali Thomas.

17 **THE COURT:** You know, I don't think it's a good idea
18 for the Court to bind the parties as to who that will be
19 because --

20 **MR. ADAIR:** There's a number of those.

21 **MR. NIELSEN:** Okay.

22 **THE COURT:** There are a number, and I --

23 **MR. NIELSEN:** (Overtalking)

24 **THE COURT:** -- I've heard of one recently that's well
25 liked, but, anyway, I -- I want the parties to be able to

1 figure that out. Again, I'm trying to leave them maximum
2 leeway as co-parents to --

3 **MR. NIELSEN:** Thank you.

4 **THE COURT:** -- figure this out and get the help they
5 need there. Again, I don't know -- in a perfect world, it
6 won't be needed. Maybe they'll be perfectly comfortable and
7 it won't be necessary. But maybe they -- it will be needed.

8 But I think it's appropriate to have the eye of a
9 professional third party on it so that we're certain that
10 we're not putting any undue strain on the minor children.

11 **MR. ADAIR:** And does respondent pay that cost,
12 Your Honor?

13 **THE COURT:** Yes, I think that's appropriate.

14 **MR. NIELSEN:** If he's going to pay, Your Honor, he
15 ought to have a little more leeway in -- in appointing or
16 choosing, but I guess if we can't agree, we send that in to
17 the Court.

18 **THE COURT:** You know --

19 **MR. NIELSEN:** We're years down the road. I know.

20 **THE COURT:** Actually -- well, here's what I would say
21 about that. I'm going to rescind that final statement. Well,
22 no, I -- yes. I think that the respondent needs to pay for
23 this given the fact that it's necessary because of what he's
24 done, but I do think that it should be resolved under the
25 standard dispute resolution mechanism the parties will have in

1 place. I -- I don't see giving one party more say than the
2 other. It's not, hopefully, a situation of a hired gun or
3 anything like that. We want someone who will give an honest
4 eye to what's best for the children and make appropriate
5 recommendations that the parties can then follow.

6 **MR. NIELSEN:** Okay.

7 **MR. ADAIR:** Thank you, Your Honor.

8 **THE COURT:** Number five. The Court concludes that,
9 given the young age of the children, frequency of contact with
10 the respondent is very important and that calls between
11 respondent and the minor children twice each week is better
12 for the children and their bond with their father.

13 In other words, with young children, frequency is
14 more important than duration, oftentimes, and so I do think
15 that twice a week is important as opposed to one. The day and
16 time for these calls will be coordinated between the parties,
17 as it has been in the past, and it's fine with me if they
18 maintain the same schedule.

19 Six, the Court makes this order having considered all
20 the evidence presented and has done its best to narrowly
21 tailor the order so that it preserves respondent's right to
22 have a good relationship and bond with his children while
23 minimizing any impact -- excuse me -- any negative impact on
24 petitioner's parental rights.

25 Seven, the Court is specifically not awarding or

1 ordering grandparent visitation as in Jones v. Jones. Rather,
2 the Court has concluded that this order is the best way to
3 maintain respondent's parental rights and connection to the
4 minor children while he is incarcerated. The Court also
5 concludes that this order is in the best interest of the
6 children because it will minimize conflict between the parties
7 and maximize the quality of their parent time with -- parent
8 time of the children with each party.

9 Any questions about what I've ordered with physical
10 custody or any clarifications?

11 **MR. ADAIR:** Yes, Your Honor. If I can just get the
12 Court's thoughts on the Jones versus Jones, and --

13 **MR. NIELSEN:** I think the Court's finding was very
14 express.

15 **MR. ADAIR:** Right. But the issue that a lot of the
16 time will actually be with the grandparents rather than
17 with -- probably really with the respondent in this case.

18 **MR. NIELSEN:** Well, I think the Court's finding
19 was -- is very clear. The Court's specifically not -- Court's
20 narrowly tailored -- I -- I think Mr. Adair's out of line
21 asking the Court to speculate on something that he may be
22 planning to appeal, and I urge the Court to limit its comments
23 and move forward.

24 **THE COURT:** I don't know that I'm going to say any
25 more than what I've said, counsel. I have made the findings I

1 have about this being the best way for these parties' children
2 to have meaningful, conflict-free --

3 **MR. ADAIR:** Thank you, Your Honor. I didn't --

4 **THE COURT:** -- anxiety-free parent time with their
5 father, so --

6 **MR. ADAIR:** Thank you, Your Honor. I didn't mean
7 to (overtalking).

8 **THE COURT:** No, I know. I -- I appreciate any
9 questions, and I'm always happy to try to make things better,
10 if I can.

11 Anything else about parent time?

12 **MR. ADAIR:** So is the summertime -- did the Court
13 indicate that it's coordinated between -- mutually agreed
14 between the petitioner and -- is that what the -- how is that
15 time chosen?

16 **THE COURT:** I'm open to counsel's suggestion on that.
17 I -- the parties have worked well --

18 **MR. NIELSEN:** Yeah.

19 **THE COURT:** -- resolving these things in the past. I
20 thought it would just be resolved like any other --

21 **MR. NIELSEN:** I agree.

22 **THE COURT:** -- decision concerning the children.

23 **MR. ADAIR:** And did I understand correctly that they
24 pay all of the cost of that -- of that --

25 **THE COURT:** I think I said that.

1 **MR. ADAIR:** Okay.

2 **THE COURT:** I think that was one of my conclusions,
3 yeah. That it was --

4 **MR. NIELSEN:** Yes, sir.

5 **THE COURT:** -- it was made in my first paragraph
6 there.

7 Next, child support. Now, this is an interesting
8 issue for the Court, one that I've not seen the like of. But
9 this is what my order is.

10 Respondent is to pay child support to petitioner
11 using a sole physical custody calculation.

12 Second, petitioner's gross monthly income is \$1,803.
13 Respondent's gross monthly income is \$60 per month.

14 Next, under the low income calculation, respondent
15 would only owe \$30 per month for child support. Given the
16 facts of this case, the reason for respondent's lack of
17 earnings, his own fault, his own criminal conduct, and the
18 need of the parties' minor children for support, the Court
19 finds that it is justified in deviating from the guidelines in
20 ordering respondent to pay petitioner child support in the
21 amount of \$700 per month for base child support.

22 The Court concludes that this is the appropriate
23 amount after analyzing all of the factors in Utah Code Section
24 78(b)-12-202, subsection 3. And we can go through that
25 explicitly if you feel like we need to, but this is a deviated

1 order and it's deviated simply because it would be inequitable
2 to the parties' children to order \$30 a month child support
3 where their father is in prison because he committed a
4 criminal act.

5 I also don't find it's equitable to impute his former
6 income to him for the findings of fact reasons that I said,
7 it's simply not reality anymore. And we'd simply, I believe,
8 saddle him with a debt he'd never be able to pay. Trying to
9 make it realistic and workable for everyone. The obligation
10 I'm imposing is beginning September 1st, 2019.

11 The parties are to share the costs of medical and
12 dental insurance, if any, equally, and out-of-pocket medical,
13 dental, orthodontic, or psychiatric care of their minor
14 children as set forth in Utah Code Section 78(b)-12-212.

15 And if you want to, counsel, you're always welcome to
16 list all those standard provisions. I didn't take the time to
17 type them out. I thought the two-hour wait was too long as it
18 was, so I didn't take the time to type all those out, but you
19 know what they are.

20 Next, the parties are to share the cost of
21 petitioner's work-related childcare costs as set forth in Utah
22 Code Section 78(b)-12-214.

23 Again, I concluded that there are no arrearages owed
24 given the support payments received from both families by the
25 petitioner.

1 Next, tax exemptions for minor children. Respondent
2 cannot benefit from the tax exemptions while he is
3 incarcerated. He also is not able to provide as much support
4 for his children as he should be able to provide because of
5 his criminal actions. Given this fact, the Court awards all
6 of the child tax exemptions to petitioner for so long as the
7 children can be claimed for income tax purposes.

8 Next, alimony. The Court concludes that petitioner
9 has demonstrated a need for alimony in the amount of at least
10 \$1,000 per month. However, respondent does not have the
11 ability to pay alimony to petitioner given his incarceration
12 and lack of employment or income. He also doesn't have the
13 assets needed to pay it. To be equitable to the parties, the
14 Court awards petitioner alimony in the amount of \$1 per month,
15 and the Court retains jurisdiction over this issue should it
16 ever be appropriate to address it in the future, given a
17 substantial change in circumstances.

18 Does that make sense to the attorneys? I'm just
19 keeping the door open, essentially --

20 **MR. ADAIR:** Yes.

21 **THE COURT:** -- in case it's ever equitable to make a
22 change.

23 **MR. ADAIR:** Yes.

24 **THE COURT:** Let me know when you're ready to proceed.
25 I realize we've talked about a lot.

1 **MR. NIELSEN:** I'm ready.

2 **THE COURT:** Personal property. One, the Court
3 concludes that the marital home was a marital asset, not a
4 separate asset, as argued by petitioner.

5 The home was acquired during the marriage and the
6 equity in the home is marital property. Respondent's criminal
7 activity did not appreciably impact the value of the home or
8 its encumbrances, according to the evidence received by the
9 Court.

10 The Court would normally divide the \$120,000 in
11 equity remaining in the property equally between the parties.
12 However, where the Court has found that respondent dissipated
13 at least \$60,000 of marital funds in the course of his illegal
14 activities, the Court finds that it is equitable to award the
15 entire \$120,000 in marital equity to petitioner.

16 All other items of personal property have already
17 been divided by the parties, and the Court orders them to be
18 divided as they have been divided by the parties.

19 As to the parties' debts, the Court concludes that --
20 from the evidence presented that there are no remaining
21 marital debts.

22 Next, the parties are each to be responsible for the
23 debts in their own names.

24 Next, respondent is to hold petitioner harmless for
25 any debts in his name, including tax debts and other debts

1 that were caused by his criminal activity.

2 And it's fine, counsel, if you want to make it a
3 mutual hold harmless provision, but it was important that --
4 specifically for petitioner's protection that respondent has
5 to hold harmless, specifically, for the tax debts and other
6 debts that were caused by his criminal activity.

7 **MR. NIELSEN:** So the language is, tax debts and other
8 debts resulting from his criminal activity?

9 **THE COURT:** Mr. Adair, does that provide adequate
10 protection for your client? That's what I was seeking in how
11 I worded that.

12 **MR. ADAIR:** Yeah. I just think that -- I actually
13 think it should just be a mutual hold harmless, yeah, tax
14 debts and other debts of any kind. I think that that's good
15 that he holds her harmless. That is adequate.

16 **THE COURT:** Okay. The next issue is attorney fees.
17 The Court concludes that given the fact that neither party has
18 the ability to pay the other party's attorney fees, each party
19 is to pay his or her own attorney fees.

20 Does counsel need any further analysis there?

21 **MR. ADAIR:** No. Thank you.

22 **MR. NIELSEN:** No, thank you, Your Honor.

23 **THE COURT:** And as to a name change, I don't know if
24 this was still at issue, but if the petitioner wants to
25 restore her name to her former surname of Waddell, she can do

1 so.

2 Are there any other issues that I failed to make a
3 ruling on?

4 **MR. NIELSEN:** One moment, Judge.

5 **MR. ADAIR:** Restraining orders as part of the
6 parenting plan. We could include, no harassment -- obviously,
7 no harassment and other appropriate orders would be
8 (overtalking) --

9 **MR. NIELSEN:** I think civility and harassment, yeah.
10 They're proper.

11 **THE COURT:** Those are part of the advisory
12 guidelines; right? As --

13 **MR. ADAIR:** So I'm assuming the Court expects us to
14 work that out as part of the parenting plan (overtalking)?

15 **THE COURT:** I think so, unless -- unless you want me
16 to rule on that now. If there's a party -- I didn't see that
17 as a big issue raised between the parties --

18 **MR. NIELSEN:** I -- well --

19 **MR. ADAIR:** There would be one issue of no --
20 probably no bothering or harassing, a specific concern during
21 the evidence was this personal communication. So I think
22 there should be an immediate end of any (overtalking) --

23 **MR. NIELSEN:** Are you speaking of the letters he
24 wrote?

25 **MR. ADAIR:** Yeah.

1 **MR. NIELSEN:** One after another?

2 **MR. ADAIR:** Right.

3 **MR. NIELSEN:** Well, that was a one-time thing and he
4 said he asked for them back and she said no, and I -- I just
5 don't see it.

6 **MR. ADAIR:** So -- so no bothering or harassing, no
7 communication --

8 **MR. NIELSEN:** We'll agree to anything that's mutual,
9 Judge.

10 **THE COURT:** All right.

11 **MR. NIELSEN:** I don't care.

12 **THE COURT:** So counsel want that. Given the
13 stipulation of the parties, the Court will conclude that it's
14 reasonable to have a mutual restraining order prohibiting each
15 party from harming, harassing, annoying, however many words
16 you want to put in there, stalking, however --

17 **MR. NIELSEN:** Yeah.

18 **THE COURT:** -- you know, whatever words you want to
19 include in that mutual restraining order.

20 **MR. NIELSEN:** We'd also ask that it be from negative
21 discussions, things of that nature.

22 **THE COURT:** Oh, of course. I haven't -- I think the
23 parties have worked hard at doing that, but, of course, it's
24 assumed that anything that I've said here is subject to the
25 standard provisions like that.

1 **MR. NIELSEN:** Sure.

2 **THE COURT:** Like that the parties won't speak
3 negatively about the other party in the presence of the
4 children or allow third parties to do so, et cetera. I mean,
5 that's -- that's part of what I would expect to be part of the
6 standard parenting plan.

7 **MR. ADAIR:** Your Honor, there were some life
8 insurance policies that she was -- that we don't really view
9 as much of an issue, that she had on his life and her life.
10 She's paying the costs. It's already taken care of. It's an
11 issue of whether we even need to bring it up, but I thought I
12 should so that there's no --

13 **MR. NIELSEN:** (Unintelligible)

14 **MR. ADAIR:** -- that it should be part of the order.

15 **MR. NIELSEN:** I'm assuming the children are the
16 beneficiaries?

17 **MR. ADAIR:** Yes.

18 **MR. NIELSEN:** We'd ask that that not be changed, but
19 those can --

20 **MR. ADAIR:** That -- well, I think she can pay the
21 costs, keep those policies in place.

22 **THE COURT:** Yeah. Make it a part of the order, then,
23 that --

24 **MR. ADAIR:** Right.

25 **THE COURT:** -- petitioner can maintain those policies

1 at her costs, and she has ownership of them.

2 MR. ADAIR: Right.

3 MR. NIELSEN: Does the Court want to include anything
4 about the children being beneficiaries?

5 THE COURT: That's fine. I think it's the intent of
6 the parties -- I think that's the --

7 (Overtalking)

8 MR. ADAIR: But I think she has ownership. She
9 can --

10 MR. NIELSEN: So that's my question.

11 THE COURT: I'd say no. Of course, I mean, there can
12 be standard -- I -- I'm just going to let her have ownership
13 of those. Later on, I mean, I think it's best that both
14 parties maintain sufficient life insurance to be able to cover
15 their financial obligations to the other party.

16 MR. ADAIR: Sure.

17 THE COURT: But as it stands right now, Mr. Marsh
18 can't do that, where he's in prison.

19 MR. NIELSEN: I understand.

20 THE COURT: I don't know if there's anybody who would
21 insure him anyway, even if they could, but I don't -- I don't
22 know about that. I know they're really reticent about
23 insuring military folks, anyway, so --

24 MR. NIELSEN: Okay.

25 THE COURT: Anything else, counsel? I want to make

1 sure I've been complete. I want to make sure that I --

2 **MR. ADAIR:** Let me check, Your Honor.

3 **THE COURT:** -- have you leave here --

4 **MR. NIELSEN:** Let me check, too.

5 **THE COURT:** -- having all the questions answered. I
6 know you may not agree with my decision, but I hope the
7 parties will be aware that I've done my best to make a
8 decision that's equitable for the benefit of your children and
9 the parties.

10 And, once again, I thank you humbly for your time and
11 for your consideration, and I wish you all the best.

12 **MR. ADAIR:** Your Honor -- hold on. We would ask that
13 the parent time start with this Thanksgiving and rotate to
14 spring break next time.

15 **THE COURT:** So what I had said is two weeks in the
16 summer and then alternating the Thanksgiving break or the
17 Christmas break. Is that --

18 **MR. ADAIR:** No, you didn't say -- I thought it was --
19 was it winter break or spring break?

20 **THE COURT:** Winter break, is what I said.

21 **MR. ADAIR:** Winter break.

22 **THE COURT:** That's the -- they've been calling it
23 lately, I think to take Christmas out of the holiday, so --

24 **MR. NIELSEN:** Well, then, I -- I guess we'll talk and
25 work that out between ourselves. Does the Court --

1 **MR. ADAIR:** Your Honor --

2 **MR. NIELSEN:** -- what's the Court's intent on winter
3 break?

4 **MR. ADAIR:** And, Your Honor, I actually have a
5 suggestion that this counselor be put in place right away
6 because I think these are delicate issues. I think that that
7 could help with these -- this process as they proceed --

8 **THE COURT:** I don't think -- I don't see anything in
9 the evidence, counsel. My conclusion is that a reunification
10 counselor is not needed now where you're going to have
11 grandparents -- who the testimony is the children are
12 comfortable with -- taking them back to visit. I don't -- I
13 just don't see it being a problem, given the testimony I've
14 heard today. But like I said, once it's going to be him
15 taking overnights and things like that, I do think it is
16 different, and I think it's justified to have a look at that
17 point in time.

18 Do the parties want to make an agreement about when
19 the next visit will be?

20 **MR. NIELSEN:** Well, let me just ask the Court. Let
21 me just turn, for example, to this year. Okay?

22 **MR. ADAIR:** Your Honor, I -- I would say, I think the
23 Court has ruled on the issues. I think I would say not -- no,
24 not right now.

25 **MR. NIELSEN:** Well, but does the Court have in mind,

1 for example, three days at Thanksgiving? I doubt it. I think
2 the Court's probably thinking more along the lines of
3 Wednesday, Thursday, Friday, Saturday, Sunday. Generally,
4 they're out of school (overtalking) --

5 **THE COURT:** And I -- I definitely wasn't trying to
6 make this difficult. If we should just make it -- the thing I
7 didn't want to do is take away Christmas -- or, you know, the
8 winter break from the petitioner every year. I'm trying to
9 make it so that it's reasonable. If it -- if it would be
10 better for me to say winter break or spring break, we can do
11 that. I'm not --

12 **MR. NIELSEN:** Well, no, for example, take this year.

13 **THE COURT:** Spring break's just awful close to summer
14 sometimes.

15 **MR. NIELSEN:** This year -- this year, Christmas is on
16 a Wednesday.

17 **THE COURT:** Uh-huh.

18 **MR. NIELSEN:** So she could easily keep the children
19 for Christmas Wednesday, and the day after, Thursday, and then
20 fly them out that night or that day, and he could have them
21 for Friday, Saturday, Sunday, Monday, which gives him the time
22 in -- in the prison. And then on Tuesday, it's the first --
23 it's New Year's Eve, Wednesday's a holiday, and they would
24 need to fly home that next day or the day after so that it's
25 about a week at Christmas.

1 If we do Thanksgiving, what I'm going to suggest to
2 the Court is, until they get further along in school, they
3 should be able to go the week, so --

4 **MR. ADAIR:** Your Honor, for my client's benefit, our
5 benefit, would you mind repeating what the time was as a
6 starting point, and then we can react to that? Would you --
7 would that be okay? That you ordered? You'd ordered the
8 specific two visits that you --

9 **THE COURT:** Well, so -- yeah. The time that I had
10 said was two weeks in the summer --

11 **MR. ADAIR:** Uh-huh.

12 **THE COURT:** -- and then either the -- it'd probably
13 be better for me to set a number of days, I suppose, and maybe
14 it is better just to have it be five days sometime in the
15 winter break. Again, I wasn't trying to create complexity or
16 problems --

17 **MR. NIELSEN:** The problem is, you can't really say
18 five because you need travel in there.

19 **THE COURT:** Well, right. I --

20 **MR. NIELSEN:** So it's got to be six or seven. And
21 I -- I think we ought to have some flexibility, but I think
22 that the Court is not tying the hands here and saying
23 Thanksgiving Day or the day before. I think --

24 **THE COURT:** Oh, no. No. I mean, the intent was to
25 give a substantial amount of parent time, but it wouldn't --

1 **MR. NIELSEN:** I don't think --

2 **THE COURT:** -- wouldn't be to the extent of two

3 weeks, for sure.

4 **MR. NIELSEN:** Oh, no.

5 **THE COURT:** It's meant to be a shorter period of

6 time.

7 **MR. ADAIR:** Your Honor, I --

8 **MR. NIELSEN:** I don't think we're out of line in

9 planning this year's because this year's is -- is only two

10 months or three months away.

11 **MR. ADAIR:** Your Honor, I'm sorry. Can I get some

12 clarification on what the Court's original starting point was?

13 It was two weeks in the summer, and what else did the Court --

14 **THE COURT:** I didn't limit the time. I just said the

15 other will alternate between the Thanksgiving and winter

16 school recesses as arranged --

17 **MR. ADAIR:** Okay.

18 **THE COURT:** -- by the parties, but, you know, come to

19 think of it, though, if I grant the whole winter recess, that

20 actually becomes pretty close to two weeks.

21 **MS. MARSH:** That is true.

22 **MR. ADAIR:** That is true.

23 **THE COURT:** And so -- that --

24 **MR. NIELSEN:** Under the relocation statute --

25 **THE COURT:** -- that actually wasn't --

1 **MR. NIELSEN:** -- that will happen. So could -- could
2 that --

3 **MR. ADAIR:** I don't think that --

4 **MR. NIELSEN:** Let me ask the Marshes because they're
5 the ones fielding this.

6 **MR. ADAIR:** Your Honor, I don't think that the -- I
7 don't think that the winter break is a good period. I think
8 that the spring break and Thanksgiving would be other --

9 **MR. NIELSEN:** Spring this year is within a month
10 of -- month-and-a-half of school.

11 **THE COURT:** That's the problem with spring that I saw
12 and that's why I steered away of that.

13 Here's what I'm going to order that -- after
14 considering everything the parties have said, I'm going to
15 strike the prior order that it be the second period -- the
16 shorter period would be Thanksgiving and winter. It would
17 just be one week's time during the winter break or school
18 recess -- however that's put -- each year, and it has to be
19 arranged by the parties.

20 But this is important. I want to make sure that the
21 petitioner is allowed to have Christmas Day with the children
22 at least every other year. In other words, I don't want it to
23 be arranged in such a way that she loses Christmas every year.
24 That's not the intent of the Court. I -- it's really -- my
25 intent was to give five to seven days, you know, five days,

1 plus travel time, basically, in the shorter time, and then two
2 weeks during the longer time. That was what I was trying to
3 modify 30-3-7 to give substantial time to the respondent -- as
4 facilitated by his parents -- without taking too much time
5 from the petitioner.

6 **MR. NIELSEN:** Well, I think that works out fine this
7 year, Judge, because she would certainly have Christmas Day.
8 And if they flew out the day after, they could have Friday,
9 Saturday, Sunday, Monday with Dad in prison, and spend New
10 Year's Eve and New Year's Day and fly home. And that's a
11 month -- that's a week.

12 **MR. ADAIR:** And my client's indicating, Your Honor,
13 that as far as stability, the concern that she has is that the
14 children are being taken away from Christmas. I guess the
15 Court is saying -- is making clear that -- that it's every
16 other year. In this case, I think some of the evidence showed
17 the stability -- and I think there could be stability for the
18 children by having Christmas every year in the state of Utah.
19 We would make that argument.

20 **MR. NIELSEN:** Well, Judge --

21 **THE COURT:** From what I've seen, the parties are able
22 to work that out to where, frankly, they can even celebrate it
23 at different times, if they need to. That's something that is
24 just -- commonly has to be worked out by divorced parties.
25 I --

1 **MR. ADAIR:** Your Honor --

2 **MR. NIELSEN:** That's just not the way the relocation
3 statute works, Your Honor. That's what you've ordered.

4 **MR. ADAIR:** Your Honor, let me maybe re-approach that
5 issue. I think if she had the Christmas every year during the
6 Christmas break, that would provide a little bit more
7 stability for the kids.

8 **THE COURT:** No, I -- I think -- I understand the
9 objection and the concern with it, but I think that it's --
10 it's better for the parties to rotate it rather than have it
11 be every single year with one party. Again, if that's
12 something the parties negotiate later and the respondent wants
13 to say, fine, let Mom have every Christmas and we'll make the
14 rest work, I'm okay with that.

15 Again, I -- I don't want to tie the parties' hands to
16 where they can't work with each other. I've tried to leave
17 enough flexibility where they -- I've encouraged them to work
18 things out with each other, not have the Court have to put
19 everything in steel binders. You know, I don't want
20 everything locked down, but I want there to be enough
21 direction that the parties can work within that structure and
22 peaceably share parent time.

23 **MR. ADAIR:** I think the Court has addressed the
24 issues.

25 **THE COURT:** Thank you. Anything else, counsel?

1 **MR. ADAIR:** No.

2 **THE COURT:** Once again, who's going to prepare the
3 order?

4 **MR. NIELSEN:** I'll --

5 **MR. ADAIR:** We'll do that, Your Honor.

6 **MR. NIELSEN:** Well, I thought I'd order a transcript.
7 If you want to prepare it, why don't you wait until I get the
8 transcript?

9 **MR. ADAIR:** Okay.

10 **MR. NIELSEN:** If you don't want to prepare it, I'll
11 prepare it. That's fine.

12 The parenting plan, we'll -- we probably, between
13 Doug and I, can come up with 80, 90 percent of that and then
14 involve the parties.

15 **THE COURT:** Sure. I appreciate that. And,
16 Mr. Adair, you're going to prepare the order?

17 **MR. ADAIR:** Yes. Yes, we will.

18 **THE COURT:** Okay. Thank you very much for your time.

19 **MR. NIELSEN:** Thank you, Your Honor.

20 **MR. ADAIR:** Thank you.

21 **THE COURT:** Given that, the Court will be adjourned.
22 (Proceedings conclude at 8:08:49.)
23
24
25

CERTIFICATE

STATE OF UTAH)
) SS.
COUNTY OF WEBER)

I, Laurie Shingle, Certified Shorthand Reporter in
and for the State of Utah, do hereby certify:

That the preceding pages of transcript were
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That the proceedings transcribed are a full, true,
and correct transcription of said proceedings, subject to my
ability to hear and understand the recording.

I further certify that I am not of kin or otherwise
associated with any of the parties to said cause of action
and that I am not interested in the outcome thereof.

Dated at Pleasant View, Utah, this the 24th day
of August, 2019.



Laurie Shingle, UT CSR, RPR, CMRS

MR. ADAIR: [75]	212 [1] 35/14	acronym [1] 29/5
MR. NIELSEN: [95]	214 [1] 35/22	act [2] 4/19 35/4
MS. MARSH: [1] 47/21	22 [1] 24/4	action [2] 20/15 52/14
THE COURT: [99]	24 [1] 9/21	actions [1] 36/5
\$	24th [1] 52/16	activities [3] 17/9 17/16 37/14
\$1 [1] 36/14	25 [1] 9/24	activity [9] 5/24 5/25 6/3 10/3 11/4 37/7 38/1 38/6 38/8
\$1,000 [2] 10/17 36/10	25,000 [1] 6/25	acts [1] 28/10
\$1,803 [2] 9/21 34/12	3	actually [8] 4/25 22/9 30/20 32/16 38/12 44/4 47/20 47/25
\$100,000 [1] 10/1	30-3-10 [1] 12/18	ADAIR [4] 1/18 29/5 38/9 51/16
\$120,000 [3] 11/10 37/10 37/15	30-3-10.2 [2] 13/19 23/14	Adair's [3] 20/25 26/21 32/20
\$20,000 [2] 6/14 7/2	30-3-37 [3] 28/8 28/14 29/2	address [1] 36/16
\$25,000 [1] 6/7	30-3-7 [1] 49/3	addressed [1] 50/23
\$26 [1] 9/22	31st [1] 4/22	adequate [2] 38/9 38/15
\$30 [2] 34/15 35/2	37 [4] 11/22 28/8 28/14 29/2	adjourned [1] 51/21
\$60 [2] 9/24 34/13	4	admonitions [1] 22/3
\$60,000 [2] 6/20 37/13	40 [1] 7/1	advice [1] 11/6
\$700 [1] 34/21	6	advisory [2] 22/12 39/11
-	60,000 [1] 7/7	AFCC [2] 29/6 29/7
-12-202 [1] 34/24	7	AFCC-qualified [1] 29/7
-12-212 [1] 35/14	78 [3] 34/24 35/14 35/22	affectionate [1] 5/19
-12-214 [1] 35/22	7:10:05 [1] 2/5	after [15] 11/9 12/9 16/21 17/1 17/19 18/2 18/17 19/23 20/4 34/23 40/1 45/19 45/24 48/13 49/8
1	8	again [13] 2/6 4/6 16/3 18/23 19/10 30/1 30/5 35/23 43/10 46/15 50/11 50/15 51/2
10 [2] 5/18 12/18	80 [1] 51/13	against [1] 26/3
10.2 [2] 13/19 23/14	8:08:49 [1] 51/22	age [4] 5/3 5/3 5/6 31/9
11 [1] 5/23	9	agree [8] 7/4 20/23 26/11 26/16 30/16 33/21 40/8 43/6
12 [1] 6/2	90 [1] 51/13	agreed [1] 33/13
13 [1] 6/19	A	agreement [2] 17/21 44/18
14 [1] 7/10	ability [10] 10/20 14/18 15/25 21/2 21/13 22/19 22/20 36/11 38/18 52/12	air [1] 26/15
14th [1] 9/20	able [13] 8/8 10/7 24/21 27/8 27/18 27/21 29/25 35/8 36/3 36/4 42/14 46/3 49/21	Ali [1] 29/16
15 [1] 7/13	above [1] 20/24	aligned [1] 14/24
16 [4] 1/12 2/1 7/17 9/23	accepting [1] 15/4	alimony [6] 10/18 10/21 36/8 36/9 36/11 36/14
17 [1] 7/23	accommodating [1] 2/12	all [39] 2/6 2/11 3/11 3/22 4/14 4/25 5/1 7/8
18 [1] 8/1	accommodation [1] 26/6	
184701031 [2] 1/5 2/8	according [4] 5/12 6/13 9/25 37/8	
19 [1] 8/10	account [3] 6/6 6/8 6/23	
1st [1] 35/10	accurate [1] 2/4	
2		
20 [3] 6/6 6/25 8/17		
20,000 [1] 6/24		
2008 [1] 4/23		
2009 [1] 5/12		
2012 [1] 5/24		
2017 [6] 5/24 6/17 7/12 7/14 7/25 11/5		
2018 [2] 7/16 8/2		
2019 [5] 1/12 2/1 9/20 35/10 52/17		
202 [1] 34/24		

--	--	--
all... [31] 10/14 12/10 12/13 16/21 16/24 17/7 17/25 18/14 18/17 20/19 20/24 21/11 22/1 22/1 22/4 23/12 27/3 28/4 28/13 28/15 28/15 31/19 33/24 34/23 35/16 35/18 36/5 37/16 40/10 43/5 43/11	APPEARANCES [1] 1/17 appeared [1] 9/6 applaud [1] 16/12 applicable [2] 13/4 24/1 apply [1] 3/16 appointing [1] 30/15 appreciably [3] 11/3 14/22 37/7 appreciate [6] 2/12 2/21 15/9 28/2 33/8 51/15 approach [1] 50/4 appropriate [9] 8/15 20/20 23/4 30/8 30/13 31/4 34/22 36/16 39/7 area [3] 10/8 15/24 18/22 argued [1] 37/4 argument [6] 13/5 21/19 24/5 26/11 28/2 49/19 arise [1] 16/1 arranged [4] 28/20 47/16 48/19 48/23 arrangement [2] 19/19 21/24 arrearages [1] 35/23 arrears [1] 11/16 arrest [3] 5/14 5/18 11/9 arrested [2] 7/10 11/18 Arthritis [1] 18/13 ask [7] 24/12 27/9 40/20 41/18 43/12 44/20 48/4 asked [1] 40/4 asking [1] 32/21 asset [2] 37/3 37/4 assets [5] 6/5 6/21 7/8 10/20 36/13 assist [2] 22/9 22/24 assistance [4] 11/17 11/20 29/3 29/8 assisted [1] 5/21 associated [1] 52/14 assume [1] 20/4 assumed [1] 40/24 assuming [2] 39/13 41/15 attempt [1] 18/3 attend [2] 19/2 20/7 attorney [5] 3/8 14/5 38/16 38/18 38/19	attorneys [2] 23/2 36/18 audio [1] 2/4 AUGUST [5] 1/12 2/1 7/14 11/5 52/17 authority [12] 13/12 14/10 17/7 17/19 17/24 18/1 18/1 19/17 19/18 20/3 21/25 22/1 average [1] 9/23 avoid [2] 21/23 22/2 award [3] 23/16 23/21 37/14 awarding [1] 31/25 awards [3] 28/6 36/5 36/14 aware [2] 8/7 43/7 away [5] 44/5 45/7 47/10 48/12 49/14 awful [1] 45/13
allotted [1] 28/13 allow [1] 41/4 allowed [3] 7/14 25/24 48/21 along [2] 45/2 46/2 already [6] 4/11 24/24 26/5 27/24 37/16 41/10 also [9] 7/20 8/25 14/25 26/7 32/4 35/5 36/3 36/12 40/20 alternate [2] 28/18 47/15 alternating [1] 43/16 always [3] 3/5 33/9 35/15 am [3] 5/5 52/13 52/15 amend [1] 4/5 amended [1] 22/5 amount [11] 6/6 6/9 6/10 8/3 10/4 17/5 34/21 34/23 36/9 36/14 46/25 analysis [2] 13/18 38/20 analyzing [1] 34/23 angst [1] 8/21 Annotated [3] 12/18 23/14 28/7 announced [1] 27/6 annoying [1] 40/15 another [1] 40/1 answered [1] 43/5 anxiety [3] 8/22 8/24 33/4 anxiety-free [1] 33/4 anybody [2] 8/8 42/20 anymore [1] 35/7 anyone [1] 29/13 anything [10] 14/21 25/21 31/3 33/11 40/8 40/24 42/3 42/25 44/8 50/25 anyway [5] 5/5 5/6 29/25 42/21 42/23	B back [3] 12/10 40/4 44/12 balances [1] 11/3 base [1] 34/21 basically [2] 4/9 49/1 be [104] beautiful [2] 5/1 14/8 because [21] 3/1 4/11 8/5 9/2 10/8 21/25 24/4 24/20 25/15 26/23 29/19 30/23 32/6 35/1 35/3 36/4 44/6 46/18 47/9 48/4 49/7 becomes [3] 25/11 25/13 47/20 been [17] 5/2 5/17 8/13 8/18 11/16 12/24 13/22 15/24 16/3 16/4 16/8 16/9 31/17 37/17 37/18 43/1 43/22 before [14] 2/16 5/18 6/18 6/25 9/7 12/3 15/15 19/3 19/3 19/6 20/11 21/3 26/20 46/23 beginning [1] 35/10 being [9] 3/2 4/25 6/17 9/10 28/9 33/1 42/4 44/13 49/14 beliefs [1] 14/24 believe [2] 15/13 35/7 bench [2] 1/11 2/9	

beneficiaries [2] 41/16 42/4	calculation [2] 34/11 34/14	14/23 16/19
benefit [7] 10/10 13/25 14/2 36/2 43/8 46/4 46/5	California [1] 4/23	choose [3] 19/17 22/11 27/17
best [22] 2/25 3/1 3/14 3/16 3/17 9/4 9/9 12/16 12/20 13/21 14/20 16/11 18/4 19/11 31/4 31/20 32/2 32/5 33/1 42/13 43/7 43/11	call [1] 4/13	choosing [1] 30/16
better [9] 15/1 16/5 16/10 31/11 33/9 45/10 46/13 46/14 50/10	calling [1] 43/22	chosen [1] 33/15
between [22] 5/24 8/11 9/1 13/10 14/8 15/5 16/1 22/17 22/18 22/18 28/6 28/18 31/10 31/16 32/6 33/13 33/14 37/11 39/17 43/25 47/15 51/12	calls [5] 8/11 9/14 16/17 31/10 31/16	Chris [1] 6/13
bifurcated [2] 4/11 9/19	camp [3] 8/1 8/11 16/14	Christmas [15] 7/22 43/17 43/23 45/7 45/15 45/19 45/25 48/21 48/23 49/7 49/14 49/18 50/5 50/6 50/13
big [1] 39/17	cannot [2] 10/10 36/2	circumstance [1] 3/21
biggest [1] 14/11	capable [3] 15/4 28/13 28/14	circumstances [3] 3/7 26/10 36/17
bind [1] 29/18	capacity [1] 10/6	City [1] 7/24
binders [1] 50/19	care [7] 3/2 5/16 5/22 28/23 35/13 40/11 41/10	civility [1] 39/9
bit [2] 8/16 50/6	carefully [2] 2/11 2/24	claimed [1] 36/7
blessing [1] 3/22	caretaker [1] 5/8	claiming [1] 4/6
bond [4] 5/20 14/8 31/12 31/22	caring [4] 5/17 15/18 20/18 21/17	clarification [1] 47/12
both [22] 2/19 2/20 3/1 3/4 3/8 4/16 5/15 5/16 14/2 14/8 14/12 15/3 15/5 15/13 15/14 15/23 16/11 17/20 18/12 19/9 35/24 42/13	case [16] 1/5 2/7 2/7 2/19 11/14 11/16 12/25 13/4 13/16 21/19 25/12 28/8 32/17 34/16 36/21 49/16	clarifications [2] 12/3 32/10
bothering [2] 39/20 40/6	cases [4] 12/21 12/23 12/24 26/10	clarify [2] 14/4 27/5
Bottom [1] 8/6	cash [1] 6/3	clear [5] 6/16 21/18 27/15 32/19 49/15
bought [1] 10/22	catch [1] 24/4	client [2] 18/10 38/10
boy [1] 12/19	catch-22 [1] 24/4	client's [2] 46/4 49/12
break [18] 20/23 29/9 43/14 43/16 43/17 43/19 43/19 43/20 43/21 44/3 45/8 45/10 45/10 46/15 48/7 48/8 48/17 50/6	cause [2] 13/16 52/14	close [2] 45/13 47/20
break's [1] 45/13	caused [3] 6/4 38/1 38/6	CMRS [1] 52/22
bring [3] 19/6 20/11 41/11	causes [1] 8/24	co [3] 15/1 16/8 30/2
bringing [1] 19/3	caveat [1] 29/2	co-parenting [2] 15/1 16/8
burdensome [1] 14/15	celebrate [1] 49/22	co-parents [1] 30/2
business [2] 6/1 6/2	certain [1] 30/9	code [9] 12/18 12/21 13/19 23/13 28/7 28/14 34/23 35/14 35/22
	certainly [1] 49/7	collateral [1] 6/15
	CERTIFICATE [1] 51/23	come [3] 25/25 47/18 51/13
	Certified [1] 52/6	comfortable [2] 30/6 44/12
	certify [2] 52/7 52/13	coming [1] 12/10
	cetera [3] 7/11 14/24 41/4	comments [1] 32/22
	change [4] 26/10 36/17 36/22 38/23	committed [1] 35/3
	changed [1] 41/18	commonly [1] 49/24
	changes [1] 8/5	commonly has [1] 49/24
	check [2] 43/2 43/4	communicate [2] 9/13 16/15
	child [11] 4/19 5/11 13/3 19/4 34/7 34/10 34/15 34/20 34/21 35/2 36/6	communicated [1] 9/16
	child's [2] 14/19 17/14	communication [4] 13/13 16/13 39/21 40/7
	childcare [1] 35/21	complete [1] 43/1
	children [85]	complexity [1] 46/15
		comply [2] 9/10 22/4

comport [1] 22/6	costs [6] 19/5 35/11 35/21 41/10 41/21 42/1	25/5 26/9 32/10 34/11
compromise [1] 18/4	could [13] 17/11 24/14 25/22 27/17 39/6 42/21	cut [1] 14/9
concern [4] 21/7 39/20 49/13 50/9	44/7 45/18 45/20 48/1 48/1 49/8 49/17	cutting [1] 26/22
concerned [1] 21/16	counsel [18] 3/24 4/12 6/22 11/7 12/2 22/9	D
concerning [2] 16/25 33/22	22/18 23/8 27/21 28/2 32/25 35/15 38/2 38/20	Dad [1] 49/9
conclude [7] 6/20 10/5 13/6 13/16 23/14 40/13 51/22	40/12 42/25 44/9 50/25	date [1] 8/4
concluded [3] 13/20 32/2 35/23	counsel's [2] 17/12 33/16	Dated [1] 52/16
concludes [22] 9/3 10/7 12/15 12/22 13/23 14/16 14/17 15/3 15/14 15/17 15/23 16/14 16/22 23/13 28/15 31/8 32/5 34/22 36/8 37/3 37/19 38/17	counselor [4] 29/4 29/8 44/5 44/10	daughters [1] 5/1
conclusion [2] 15/22 44/9	counselors [2] 22/16 22/24	DAVIS [1] 1/2
conclusions [7] 2/14 2/16 3/25 4/4 4/12 12/14 34/2	COUNTY [2] 1/2 52/4	day [15] 12/9 16/24 16/24 31/15 45/19 45/20 45/24 45/24 46/23 46/23 48/21 49/7 49/8 49/10 52/16
conduct [1] 34/17	course [10] 3/16 4/4 4/10 13/10 19/4 22/4 37/13 40/22 40/23 42/11	days [5] 45/1 46/13 46/14 48/25 48/25
conflict [5] 9/1 15/25 16/4 32/6 33/2	court [107]	deal [1] 26/12
conflict-free [1] 33/2	COURT'S [24] 1/11 3/23 4/3 4/17 20/6 20/23 20/23 24/24 25/15 26/2 26/4 26/16 26/17 27/4 27/24 28/21 32/12 32/13 32/18 32/19 32/19 44/2 45/2 47/12	debt [1] 35/8
connection [1] 32/3	cover [1] 42/14	debts [15] 11/11 11/13 11/13 37/19 37/21 37/23 37/25 37/25 37/25 38/5 38/6 38/7 38/8 38/14 38/14
conservative [1] 7/6	create [1] 46/15	December [2] 5/12 7/25
consider [4] 2/11 2/13 2/23 17/14	created [1] 6/3	decides [1] 21/24
consideration [3] 10/12 25/3 43/11	credit [1] 11/1	decision [12] 13/12 14/10 15/2 16/2 17/6 17/19 17/24 20/14 27/7 33/22 43/6 43/8
considered [1] 31/19	crimes [2] 7/11 7/16	decision-making [7] 13/12 14/10 15/2 16/2 17/6 17/19 17/24
considering [3] 8/13 16/21 48/14	criminal [12] 5/24 6/2 10/3 11/14 28/10 34/17 35/4 36/5 37/6 38/1 38/6 38/8	decisions [13] 14/3 14/13 14/19 14/23 16/19 16/25 17/3 17/9 17/14 17/17 17/25 21/14 22/1
consult [2] 18/22 20/7	CSR [1] 52/22	decree [3] 4/11 4/13 9/19
contact [1] 31/9	Cumberland [1] 8/2	deductions [2] 10/11 10/12
contains [1] 22/10	current [5] 8/4 9/21 9/24 23/21 24/4	DEFENDANT [1] 1/19
continue [1] 15/7	currently [2] 10/20 23/19	defendant's [1] 6/18
continuing [1] 19/18	custodial [1] 19/18	definitely [4] 7/8 21/21 22/6 45/5
continuous [1] 21/17	custodian [1] 19/16	delicate [1] 44/6
convey [1] 2/19	custody [34] 4/19 7/14 7/18 12/15 12/17 12/20 13/3 13/8 13/17 13/20 13/25 15/20 16/22 17/1 17/2 17/3 18/18 19/14 21/23 21/24 22/9 22/13 22/13 22/22 23/12 23/15	demonstrated [3] 14/18 15/6 36/9
conveyed [1] 11/5		dental [4] 17/7 17/15 35/12 35/13
convictions [2] 10/7 10/9		details [1] 22/11
convinced [1] 9/8		development [1] 13/24
cool [1] 5/4		deviated [2] 34/25 35/1
coordinated [2] 31/16 33/13		
correct [1] 52/11		
correctly [1] 33/23		
cost [4] 28/10 30/11		

deviating [1] 34/19	Doug [1] 51/13	entire [2] 14/1 37/15
devoted [1] 5/17	DOUGLAS [1] 1/18	entitled [1] 28/16
dictate [1] 23/4	down [2] 30/19 50/20	enumerated [1] 12/21
did [4] 33/12 33/23 37/7 47/13	duration [1] 31/14	equally [2] 35/12 37/11
didn't [10] 18/7 23/3 33/3 33/6 35/16 35/18 39/16 43/18 45/7 47/14	during [9] 5/7 5/15 10/22 10/23 37/5 39/20 48/17 49/2 50/5	equitable [8] 10/4 10/13 24/10 35/5 36/13 36/21 37/14 43/8
Diego [1] 4/23	duties [1] 26/20	equity [6] 10/23 11/1 11/9 37/6 37/11 37/15
different [5] 18/18 21/15 26/7 44/16 49/23	E	especially [2] 8/22 16/1
difficult [6] 3/7 3/21 13/6 16/10 16/14 45/6	each [17] 4/2 8/13 8/18 14/17 14/19 18/24 19/4 20/10 28/18 31/11 32/8 37/22 38/18 40/14 48/18 50/16 50/18	essentially [3] 2/21 20/14 36/19
direction [2] 29/9 50/21	earlier [1] 27/7	establishes [1] 10/17
disagree [1] 14/22	early [2] 7/16 8/2	estimate [2] 7/2 7/5
disagreement [1] 19/20	earning [1] 10/5	et [3] 7/11 14/24 41/4
discuss [3] 8/15 18/19 27/22	earnings [1] 34/17	Eve [2] 45/23 49/10
discussion [3] 17/20 18/2 23/10	easily [1] 45/18	even [5] 15/1 27/17 41/11 42/21 49/22
discussions [1] 40/21	easy [1] 3/5	eventually [1] 18/12
dispute [4] 18/19 20/4 20/23 30/25	ecclesiastical [1] 14/6	ever [2] 36/16 36/21
disputed [2] 18/23 19/10	educational [2] 17/8 17/16	every [10] 23/4 28/19 45/8 48/22 48/23 49/15 49/18 50/5 50/11 50/13
disputes [1] 21/17	EDWARDS [2] 1/13 2/2	everyone [1] 35/9
dissipate [1] 6/4	effort [1] 16/12	everything [4] 2/13 48/14 50/19 50/20
dissipated [3] 6/20 7/7 37/12	efforts [1] 15/10	evidence [15] 2/11 6/4 7/5 7/8 11/15 12/25 12/25 16/15 21/8 31/20 37/8 37/20 39/21 44/9 49/16
distance [2] 13/9 28/6	eight [3] 5/3 5/10 10/19	exacerbated [1] 8/25
DISTRICT [1] 1/1	either [5] 8/9 12/2 14/22 27/13 46/12	exact [1] 6/9
divide [1] 37/10	electronic [2] 16/16 52/9	exactly [2] 8/7 11/25
divided [3] 37/17 37/18 37/18	element [2] 13/2 14/16	example [3] 44/21 45/1 45/12
divorce [3] 4/13 9/2 9/19	else [4] 33/11 42/25 47/13 50/25	excellent [1] 16/8
divorced [1] 49/24	email [1] 9/14	except [1] 12/20
documentation [1] 10/17	emergent [2] 19/4 20/8	excuse [6] 11/22 12/23 13/1 17/8 22/13 31/23
does [17] 9/25 10/3 10/19 11/15 11/25 22/15 24/16 25/4 29/13 30/11 36/10 36/18 38/9 38/20 42/3 43/25 44/25	employment [1] 36/12	exemptions [3] 36/1 36/2 36/6
doesn't [5] 13/15 22/19 26/9 27/18 36/12	encourage [3] 3/3 15/7 15/12	exercising [1] 28/13
doing [5] 11/25 14/11 14/12 28/14 40/23	encouraged [1] 50/17	expect [1] 41/5
domestic [1] 13/1	encouraging [1] 15/4	expects [1] 39/13
done [6] 3/12 8/13 21/15 30/24 31/20 43/7	encumbered [1] 10/25	experience [1] 14/5
door [2] 24/9 36/19	encumbrances [2] 25/8 37/8	expert [2] 18/22 20/7
doubt [1] 45/1	end [5] 2/14 3/2 12/1 23/8 39/22	explain [1] 13/20
	endeavor [1] 3/19	explicitly [1] 34/25
	Enforcement [1] 4/19	express [1] 32/14
	enough [2] 50/17 50/20	expressed [1] 9/7
	entered [1] 9/19	extensive [1] 11/17

extent [2] 3/3 47/2	financial [7] 5/24 7/11	four [2] 5/6 11/12
extracurricular [3] 17/8 17/9 17/16	10/13 11/16 11/17 11/20	Fourth [1] 29/1
extremely [1] 14/7	42/15	frankly [4] 2/25 3/6
eye [3] 19/11 30/8 31/4	find [7] 2/17 10/3	28/14 49/22
F	11/15 13/15 14/14 27/2	fraud [1] 7/11
facilitate [4] 9/5 9/7	35/5	fraudulent [2] 5/25
15/20 28/22	finding [2] 32/13 32/18	11/4
facilitated [4] 7/18	findings [14] 2/13 2/16	free [4] 6/16 25/8 33/2
7/21 8/11 49/4	3/23 3/25 4/4 4/8 4/12	33/4
facility [1] 8/3	6/21 12/1 12/13 24/8	frequency [2] 31/9
fact [10] 3/23 4/8 7/8	28/21 32/25 35/6	31/13
12/1 12/14 28/22 30/23	finds [10] 6/19 8/20	Friday [3] 45/3 45/21
35/6 36/5 38/17	8/25 10/16 10/19 11/2	49/8
factor [1] 13/15	13/11 23/21 34/19 37/14	full [4] 5/10 17/19
factors [4] 13/19 16/21	fine [6] 31/17 38/2	18/2 52/10
23/13 34/23	42/5 49/6 50/13 51/11	full-time [1] 5/10
facts [2] 28/8 34/16	fired [1] 10/2	funds [1] 37/13
failed [1] 39/2	first [14] 4/8 5/2 5/11	further [8] 14/4 15/17
fair [3] 17/20 18/2	9/11 10/25 12/15 13/23	23/10 24/6 27/14 38/20
26/14	14/18 16/12 18/19 23/12	46/2 52/13
faith [3] 17/21 18/3	28/5 34/5 45/22	Furthermore [1] 10/11
18/20	five [7] 4/22 11/15	future [3] 15/13 16/11
familiar [1] 24/16	31/8 46/14 46/18 48/25	36/16
families [1] 35/24	48/25	G
family [6] 2/20 8/21	flaws [1] 3/18	gained [1] 10/23
9/4 11/17 11/18 11/19	flew [1] 49/8	Generally [1] 45/3
far [3] 20/12 20/13	flexibility [2] 46/21	gentlemen [1] 2/7
49/13	50/17	get [10] 15/1 18/23
FARMINGTON [1] 1/1	flow [1] 6/3	21/14 26/18 27/21 30/4
fashion [1] 24/14	fly [3] 45/20 45/24	32/11 46/2 47/11 51/7
fast [1] 12/8	49/10	gets [3] 24/9 24/16
father [6] 5/19 14/6	foes [1] 18/11	26/18
15/12 31/12 33/5 35/3	folks [1] 42/23	getting [1] 17/22
fault [1] 34/17	follow [2] 29/11 31/5	girls [2] 14/1 14/8
faults [1] 3/17	following [3] 12/14	give [9] 12/6 14/2
federal [11] 7/11 7/14	16/23 19/21	14/18 16/18 25/19 31/3
8/1 8/6 9/12 10/6 11/14	follows [1] 6/5	46/25 48/25 49/3
16/14 24/16 25/21 25/24	foregoing [1] 12/13	given [20] 3/20 4/3
feel [2] 24/9 34/25	foreseeable [2] 24/2	6/21 7/3 16/1 23/15
feelings [1] 8/23	24/5	28/5 28/8 28/12 30/23
feels [2] 8/14 8/14	forever [1] 26/15	31/9 34/15 35/24 36/5
fees [4] 6/7 38/16	formal [1] 2/16	36/11 36/16 38/17 40/12
38/18 38/19	former [2] 35/5 38/25	44/13 51/21
felony [1] 10/7	formidable [1] 18/11	gives [1] 45/21
fielding [1] 48/5	formulate [2] 2/24	giving [1] 31/1
figure [2] 30/1 30/4	17/13	God's [1] 3/22
filed [2] 23/24 27/7	formulated [1] 17/10	goes [2] 25/2 26/3
files [1] 23/22	formulating [3] 22/10	going [25] 2/18 15/10
final [3] 17/24 22/8	22/25 23/3	18/12 19/15 21/9 21/13
30/21	forth [3] 26/6 35/14	22/22 24/8 26/18 26/23
finality [1] 2/14	35/21	27/12 27/14 27/16 27/20
	forward [4] 2/15 12/3	30/14 30/21 32/24 42/12
	16/6 32/23	

going... [7] 44/10 44/14 46/1 48/13 48/14 51/2 51/16	44/23 48/18 49/13 49/24 50/23	37/6 37/7 45/24 49/10
good [10] 3/20 4/2 17/21 18/3 18/20 27/20 29/17 31/22 38/14 48/7	hasn't [1] 13/21	homemaker [1] 5/13
got [3] 17/25 18/1 46/20	have [68]	Honda [2] 6/11 7/3
grandfather [1] 14/6	haven't [4] 14/21 16/3 26/25 40/22	honest [1] 31/3
grandparent [1] 32/1	having [8] 4/12 7/18 21/11 21/16 21/17 31/19 43/5 49/18	Honor [32] 12/4 12/6 18/16 19/13 20/17 21/7 23/6 24/23 26/13 30/12 30/14 31/7 32/11 33/3 33/6 38/22 41/7 43/2 43/12 44/1 44/4 44/22 46/4 47/7 47/11 48/6 49/12 50/1 50/3 50/4 51/5 51/19
grandparents [2] 32/16 44/11	he [59]	HONORABLE [2] 1/13 2/2
grant [1] 47/19	he'd [1] 35/8	hope [7] 2/19 2/24 3/14 3/15 3/19 23/9 43/6
granted [2] 4/11 9/18	he'll [3] 8/7 25/21 27/18	hopefully [2] 9/2 31/2
granting [1] 13/12	he's [15] 21/9 24/21 24/25 24/25 25/1 25/8 25/24 25/24 25/24 26/17 27/8 28/14 30/14 30/23 42/18	hopes [1] 14/25
Gravity [1] 18/11	hear [1] 52/12	hour [2] 9/22 35/17
great [4] 3/11 3/13 14/8 14/10	heard [5] 10/14 14/21 26/25 29/24 44/14	hours [1] 9/23
gross [2] 34/12 34/13	heart [1] 9/9	housing [1] 28/23
guess [4] 4/13 30/16 43/24 49/14	HELOC [1] 11/2	however [11] 4/14 4/15 11/24 20/24 28/8 28/15 36/10 37/12 40/15 40/16 48/18
guidelines [3] 22/12 34/19 39/12	help [6] 3/22 15/12 18/23 23/2 30/4 44/7	huh [2] 45/17 46/11
gun [1] 31/2	her [18] 5/4 8/21 9/4 9/22 11/17 15/10 17/3 17/23 21/16 22/20 26/14 38/15 38/19 38/25 38/25 41/9 42/1 42/12	human [1] 3/19
H	here [9] 15/9 16/3 17/13 21/7 26/17 27/5 40/24 43/3 46/22	humbly [1] 43/10
habit [1] 19/9	here's [2] 30/20 48/13	hurts [1] 12/9
had [12] 2/9 2/10 2/23 5/16 5/19 6/25 26/20 29/5 41/9 43/15 46/9 50/5	hereby [1] 52/7	I
half [3] 19/5 20/10 48/10	hired [1] 31/2	I'd [3] 3/3 42/11 51/6
hand [1] 18/21	his [38] 2/19 5/18 7/15 7/16 7/18 8/4 9/17 9/25 10/2 10/2 10/5 11/14 16/9 17/3 23/23 23/25 24/5 26/19 26/20 26/20 27/7 28/10 28/15 31/22 34/17 34/17 35/5 36/4 36/5 36/11 37/13 37/25 38/1 38/6 38/8 38/19 41/9 49/4	I'll [2] 51/4 51/10
hands [2] 46/22 50/15	hold [5] 37/24 38/3 38/5 38/13 43/12	I'm [41] 2/20 3/15 4/4 14/4 14/11 14/11 14/14 15/2 17/12 17/22 18/16 19/21 21/22 22/2 22/2 22/6 22/22 23/9 24/6 24/15 27/14 27/15 27/20 30/1 30/21 32/24 33/9 33/16 35/10 36/18 37/1 39/13 41/15 42/12 45/8 45/11 46/1 47/11 48/13 48/14 50/14
happen [3] 18/7 24/8 48/1	holds [1] 38/15	I've [17] 2/12 2/23 4/11 5/2 12/1 13/20 29/24 32/9 32/25 34/8 40/24 43/1 43/7 44/13 49/21 50/16 50/17
happens [1] 15/6	holiday [2] 43/23 45/23	I.A.M [1] 5/4
happy [2] 4/4 33/9	holidays [1] 7/22	I.L.M [1] 5/3
harassing [3] 39/20 40/6 40/15	home [14] 4/18 10/22 10/23 10/25 11/1 11/6	idea [1] 29/17
harassment [3] 39/6 39/7 39/9		Identification [1] 2/3
hard [2] 3/24 40/23		
harming [1] 40/15		
harmless [5] 37/24 38/3 38/5 38/13 38/15		
has [32] 2/10 8/11 8/13 8/17 8/18 8/21 9/16 11/16 14/17 16/4 16/8 17/2 20/3 20/20 21/1 26/5 27/7 29/14 31/17 31/20 32/2 36/9 37/12		

- identity [1] 7/11 illegal [2] 6/2 37/13 immediate [1] 39/22 impact [3] 31/23 31/23 37/7 impacted [1] 11/3 imperfect [1] 15/24 important [8] 14/7 19/8 21/19 31/10 31/14 31/15 38/3 48/20 imposed [1] 25/14 imposing [1] 35/10 impossible [1] 10/5 imprisoned [1] 7/15 impute [2] 10/4 35/5 incarcerated [7] 8/19 10/1 10/11 17/18 28/17 32/4 36/3 incarceration [11] 8/10 9/17 15/16 15/18 16/7 16/9 19/25 23/16 25/5 28/12 36/11 include [7] 11/13 21/1 21/21 22/11 39/6 40/19 42/3 includes [1] 26/1 including [2] 5/25 37/25 income [11] 9/21 9/22 9/24 10/4 10/20 34/12 34/13 34/14 35/6 36/7 36/12 incorporate [1] 21/21 indeed [1] 3/21 INDEX [1] 1/6 indicate [1] 33/13 indicating [1] 49/12 inequitable [1] 35/1 infallibility [1] 4/7 initials [1] 5/4 input [4] 4/5 14/2 14/13 16/19 insofar [1] 22/5 instead [1] 3/17 insurance [3] 35/12 41/8 42/14 insure [1] 42/21 insuring [1] 42/23 intending [1] 27/15 intends [1] 11/23 intent [15] 3/16 3/17 20/6 22/6 25/15 25/18 26/4 26/17 26/17 27/4	48/25 intentional [1] 8/20 interest [10] 2/25 6/1 9/9 12/16 12/20 13/21 14/20 18/4 19/11 32/5 interested [1] 52/15 interesting [1] 34/7 interests [1] 3/14 involve [1] 51/14 involved [4] 5/16 5/19 5/23 5/25 involves [1] 19/3 isn't [1] 2/17 issue [20] 17/21 18/2 18/3 18/23 18/25 19/3 20/17 21/2 25/23 26/5 32/15 34/8 36/15 38/16 38/24 39/17 39/19 41/9 41/11 50/5 issues [8] 4/14 13/11 19/10 20/19 39/2 44/6 44/23 50/24 it'd [2] 20/14 46/12 it's [45] 3/11 3/13 3/24 7/4 14/7 14/11 17/25 18/1 19/8 20/7 20/19 24/24 26/8 26/14 27/15 27/16 29/17 30/8 30/23 31/2 31/17 33/13 35/1 35/5 35/7 36/21 38/2 40/13 40/23 41/10 41/10 42/5 42/13 44/14 44/16 45/9 45/22 45/23 45/24 46/20 47/5 48/24 49/15 50/9 50/10 items [1] 37/16 its [5] 23/21 24/2 31/20 32/22 37/8 J January [2] 7/16 8/2 Jews [1] 5/5 job [1] 10/2 join [1] 21/6 joint [16] 12/16 12/19 13/3 13/8 13/12 13/17 13/20 13/25 15/2 15/20 16/22 17/6 19/14 22/8 22/12 22/13 Jones [4] 32/1 32/1 32/12 32/12 judge [9] 3/9 14/5 17/11 24/12 25/5 39/4	July [1] 7/12 jurisdiction [5] 4/9 4/17 4/19 25/25 36/15 justified [2] 34/19 44/16 K keep [4] 13/17 19/9 41/21 45/18 keeping [1] 36/19 key [1] 14/23 KEYWORD [1] 1/6 kids [3] 26/2 26/23 50/7 kin [1] 52/13 kind [2] 5/4 38/14 KIRK [1] 1/7 knees [1] 26/22 know [34] 2/17 3/5 3/8 3/11 3/24 11/25 18/14 22/12 23/19 25/2 25/21 27/12 27/18 28/19 29/13 29/16 29/17 30/5 30/18 30/19 32/24 33/8 35/19 36/24 38/23 40/18 42/20 42/22 42/22 43/6 45/7 47/18 48/25 50/19 known [1] 11/2 L lack [2] 34/16 36/12 ladies [1] 2/7 Lake [1] 7/24 language [2] 21/1 38/7 large [2] 11/14 13/9 last [1] 23/4 late [1] 7/24 lately [1] 43/23 later [3] 8/16 42/13 50/12 LAUREN [1] 1/4 Laurie [2] 52/6 52/22 law [4] 8/6 12/14 26/7 26/9 LAYTON [1] 2/1 leader [1] 14/6 learned [1] 16/5 learning [1] 16/9 least [6] 3/21 6/20 7/7 36/9 37/13 48/22 leave [8] 24/9 25/12 25/19 25/25 26/15 30/1 43/3 50/16 led [1] 6/15
--	---	--

leeway [2] 30/2 30/15	lower [2] 6/23 7/1	14/12 16/19 33/2
legal [14] 12/15 12/17 12/20 13/3 13/8 13/17 13/20 13/25 15/20 16/22 19/14 20/15 22/8 22/13	lowest [1] 19/10	means [2] 9/17 16/18
lengthy [1] 23/16	M	meant [2] 23/1 47/5
less [1] 16/8	made [8] 4/6 10/1 13/5 23/22 26/6 28/9 32/25 34/5	mechanism [3] 18/19 20/5 30/25
lesser [1] 19/1	Mail [2] 9/14 16/17	mediation [3] 19/2 19/5 20/7
let [11] 13/18 18/14 36/24 42/12 43/2 43/4 44/20 44/20 48/4 50/4 50/13	maintain [4] 31/18 32/3 41/25 42/14	medical [4] 17/7 17/15 35/11 35/12
letters [1] 39/23	major [6] 14/3 14/13 16/19 17/7 17/14 17/15	members [2] 8/21 9/5
level [1] 19/10	make [29] 4/1 16/24 17/3 17/25 19/8 20/14 21/13 22/1 22/15 24/6 24/7 31/4 33/9 35/9 36/18 36/21 38/2 39/2 41/22 42/25 43/1 43/7 44/18 45/6 45/6 45/9 48/20 49/19 50/13	mental [1] 13/2
lien [1] 6/17	makes [4] 4/3 12/14 14/21 31/19	message [1] 16/16
life [6] 14/5 17/14 41/7 41/9 41/9 42/14	making [12] 10/12 13/3 13/12 14/10 15/2 16/2 17/6 17/19 17/24 24/6 27/23 49/15	messaging [1] 9/14
Life's [1] 12/10	mandate [1] 23/14	MICHAEL [3] 1/13 1/19 2/2
like [12] 5/6 12/3 24/9 25/21 31/3 33/20 34/8 34/25 40/25 41/2 44/14 44/15	many [1] 40/15	might [3] 4/10 5/5 16/1
liked [1] 29/25	marital [13] 6/4 6/21 7/7 11/6 11/8 11/10 11/11 37/3 37/3 37/6 37/13 37/15 37/21	military [2] 3/8 42/23
likely [1] 15/19	marriage [5] 5/7 5/15 10/23 10/24 37/5	mind [4] 18/5 29/14 44/25 46/5
limit [3] 27/14 32/22 47/14	married [1] 4/22	minimize [1] 32/6
limitations [1] 24/18	MARSH [6] 1/4 1/7 2/7 2/7 2/17 42/17	minimizing [1] 31/23
limited [1] 25/1	Marshes [1] 48/4	minimum [1] 5/25
line [4] 8/6 11/1 32/20 47/8	Maryland [2] 8/2 8/18	minivan [2] 6/11 7/3
lines [1] 45/2	matter [4] 2/18 9/3 18/20 20/13	minor [20] 4/21 5/8 7/19 8/12 8/17 9/16 11/24 12/17 16/24 16/25 17/3 23/17 28/11 28/24 30/10 31/11 32/4 34/18 35/13 36/1
list [2] 17/10 35/16	matters [2] 19/6 27/3	minute [1] 18/5
listed [2] 8/4 20/24	maturity [1] 15/25	mistakes [1] 4/6
litigation [1] 25/12	maximize [1] 32/7	modification [2] 23/22 24/10
little [6] 5/1 8/15 12/11 14/8 30/15 50/6	maximum [1] 30/1	modify [6] 23/23 23/24 24/4 27/6 27/7 49/3
live [4] 21/2 23/20 26/2 26/23	may [8] 2/3 4/22 8/6 8/20 9/20 20/25 32/21 43/6	Mom [1] 50/13
lives [5] 2/15 14/1 14/3 14/23 16/20	maybe [4] 30/6 30/7 46/13 50/4	moment [1] 39/4
living [1] 27/13	mean [8] 22/17 25/5 27/12 33/6 41/4 42/11 42/13 46/24	moments [1] 3/10
loans [2] 5/25 6/15		Monday [2] 45/21 49/9
locked [1] 50/20		month [12] 9/22 9/25 10/17 34/13 34/15 34/21 35/2 36/10 36/14 48/9 48/10 49/11
long [6] 12/9 23/24 25/11 25/21 35/17 36/6		monthly [2] 34/12 34/13
longer [3] 12/11 27/23 49/2		months [2] 47/10 47/10
look [2] 4/1 44/16		more [9] 4/4 8/16 10/1 30/15 31/1 31/14 32/25 45/2 50/6
looking [1] 3/17		mortgage [3] 10/25 11/1 11/3
loses [1] 48/23		most [2] 7/4 15/19
lot [4] 3/7 8/19 32/15 36/25		move [6] 2/15 12/3 22/20 25/1 28/9 32/23
love [1] 15/12		

--		
moved [1] 7/23	7/4 12/5 19/20	7/6 9/6 11/5 12/22 14/9
moving [1] 16/6	night [1] 45/20	18/25 20/10 23/23 25/1
MR [15] 1/18 1/19 2/17	nine [2] 5/15 10/22	25/14 25/25 27/8 27/23
2/20 6/13 7/4 12/5	no [31] 2/18 3/18 4/20	28/17 29/16 29/24 31/1
19/20 20/25 26/21 29/5	11/11 12/6 12/25 23/11	31/15 34/2 34/8 37/2
32/20 38/9 42/17 51/16	27/24 30/22 33/8 35/23	39/4 39/19 40/1 40/3
much [6] 8/14 11/24	37/20 38/21 38/22 39/6	48/17 50/11
36/3 41/9 49/4 51/18	39/7 39/19 39/20 40/4	one-time [1] 40/3
mutual [5] 38/3 38/13	40/6 40/6 41/12 42/11	one-year [1] 25/14
40/8 40/14 40/19	43/18 44/23 45/12 46/24	ones [1] 48/5
mutually [1] 33/13	46/24 47/4 50/8 51/1	only [5] 18/25 23/15
my [23] 2/16 3/16 7/5	none [1] 12/23	29/16 34/15 47/9
14/5 18/10 20/22 21/19	nonetheless [1] 7/5	open [6] 17/12 24/10
22/4 22/8 23/9 27/6	Nope [1] 12/12	25/12 25/19 33/16 36/19
27/25 34/2 34/5 34/9	normally [1] 37/10	opportunity [8] 2/11
42/10 43/6 43/7 44/9	North [1] 7/24	2/23 24/15 25/19 26/3
46/4 48/24 49/12 52/11	Northern [1] 7/24	26/19 26/21 26/22
N	not [55]	opposed [1] 31/15
N.R.M [2] 5/2 8/23	note [3] 2/3 13/5 26/7	order [27] 2/24 9/19
name [3] 37/25 38/23	noted [1] 6/12	11/14 22/4 22/19 23/15
38/25	notes [1] 18/8	24/2 24/4 24/6 24/10
names [2] 11/13 37/23	nothing [1] 13/6	27/1 31/19 31/21 32/2
narrowly [3] 14/14	notice [1] 17/4	32/5 34/9 35/1 35/2
31/20 32/20	November [1] 6/17	40/14 40/19 41/14 41/22
nature [1] 40/21	now [13] 2/13 3/9 9/3	48/13 48/15 51/3 51/6
neat [1] 5/5	12/12 13/18 14/6 15/19	51/16
necessary [6] 4/10 17/4	24/6 34/7 39/16 42/17	ordered [4] 32/9 46/7
20/16 28/9 30/7 30/23	44/10 44/24	46/7 50/3
need [17] 6/3 10/17	number [25] 1/5 2/8	ordering [5] 13/17 15/2
14/12 18/8 19/4 21/5	4/16 4/18 4/22 4/24 5/7	18/8 32/1 34/20
21/13 21/15 30/5 34/18	5/10 5/18 5/23 6/2 6/19	orders [5] 9/10 10/13
34/25 36/9 38/20 41/11	7/10 7/13 7/17 7/23 8/1	37/17 39/5 39/7
45/24 46/18 49/23	8/10 8/17 9/21 9/24	original [1] 47/12
needed [9] 3/20 4/6	29/20 29/22 31/8 46/13	orthodontic [3] 17/7
18/25 23/10 29/10 30/6	numbers [1] 6/24	17/16 35/13
30/7 36/13 44/10	O	other [37] 4/2 4/14
needs [6] 13/2 13/24	objection [1] 50/9	4/20 9/4 13/15 15/5
19/17 22/5 26/15 30/22	obligation [1] 35/9	17/4 17/22 22/10 23/2
negative [2] 31/23	obligations [1] 42/15	23/3 24/3 24/5 24/15
40/20	obviously [1] 39/6	27/15 28/18 28/19 31/2
negatively [1] 41/3	Odyssey [2] 6/11 7/3	31/13 33/20 37/16 37/25
negotiate [1] 50/12	off [1] 26/22	38/5 38/7 38/14 38/18
neither [2] 11/19 38/17	often [1] 21/23	39/2 39/7 41/3 42/15
never [1] 35/8	oftentimes [1] 31/14	47/15 48/8 48/22 48/22
New [3] 45/23 49/9	Oh [3] 40/22 46/24 47/4	49/16 50/16 50/18
49/10	okay [13] 12/12 27/19	others [1] 21/6
next [22] 7/10 7/13	29/21 31/6 34/1 38/16	otherwise [2] 11/2
13/18 14/16 15/3 15/14	42/24 44/21 46/7 47/17	52/13
15/23 16/7 16/13 22/23	50/14 51/9 51/18	ought [4] 25/2 25/8
23/19 34/7 34/14 35/20	oldest [1] 8/23	30/15 46/21
36/1 36/8 37/22 37/24	once [7] 2/6 7/20 8/18	our [1] 46/4
38/16 43/14 44/19 45/24	29/1 43/10 44/14 51/2	ourselves [1] 43/25
		outcome [1] 52/15

outside [2] 9/13 9/15	passport [1] 21/14	place [6] 9/10 22/19
over [3] 6/14 13/25	past [2] 31/17 33/19	24/3 31/1 41/21 44/5
36/15	pause [1] 12/11	plan [10] 19/9 22/10
overlapping [1] 3/25	pay [16] 10/21 19/5	22/11 22/25 23/3 23/5
overnights [1] 44/15	20/10 28/10 30/11 30/14	39/6 39/14 41/6 51/12
overtalking [9] 25/6	30/22 33/24 34/10 34/20	planning [2] 32/22 47/9
25/14 29/23 33/7 39/8	35/8 36/11 36/13 38/18	played [1] 5/20
39/14 39/22 42/7 45/4	38/19 41/20	Pleasant [1] 52/16
owe [1] 34/15	paying [1] 41/10	Please [1] 24/13
owed [1] 35/23	payments [1] 35/24	plus [1] 49/1
own [6] 11/13 28/15	peaceably [1] 50/22	pocket [1] 35/12
34/17 34/17 37/23 38/19	pending [2] 4/20 17/21	point [9] 5/13 12/4
owned [1] 6/16	people [3] 3/7 3/9 9/13	20/4 20/25 26/19 27/13
ownership [3] 42/1 42/8	per [13] 7/20 9/21 9/22	44/17 46/6 47/12
42/12	9/23 9/25 10/2 10/17	policies [3] 41/8 41/21
P	28/16 34/13 34/15 34/21	41/25
pages [1] 52/8	36/10 36/14	positive [2] 15/4 15/11
paragraph [1] 34/5	percent [1] 51/13	possible [2] 11/24
pardon [1] 2/10	perfect [3] 3/19 16/3	19/10
parent [31] 3/2 7/18	30/5	practical [1] 20/13
9/5 9/8 13/3 14/9 15/5	perfectly [1] 30/6	practice [1] 14/25
16/3 17/2 17/4 19/16	peril [1] 14/10	preceding [2] 6/21 52/8
20/18 21/12 21/24 23/18	period [5] 28/17 47/5	pregnant [1] 5/11
26/8 27/1 28/5 28/7	48/7 48/15 48/16	prepare [9] 2/13 4/2
28/10 28/23 28/24 29/2	periods [1] 28/25	4/3 4/12 51/2 51/7
29/10 32/7 32/7 33/4	person [3] 3/7 9/15	51/10 51/11 51/16
33/11 43/13 46/25 50/22	28/16	prepared [1] 12/2
parental [3] 26/20	personal [3] 37/2 37/16	preponderance [1] 12/24
31/24 32/3	39/21	presence [3] 9/1 16/4
parenting [12] 15/1	petition [3] 23/23	41/3
16/8 19/9 22/10 22/11	23/24 27/7	present [1] 2/17
22/25 23/3 23/5 39/6	petitioner [43] 1/5	presented [5] 5/2 7/9
39/14 41/6 51/12	1/18 5/8 5/10 5/21 6/16	7/20 31/20 37/20
parents [8] 5/17 9/6	7/18 7/20 7/23 8/11	preserves [1] 31/21
13/7 14/2 14/9 28/22	8/14 8/21 9/4 9/16 11/6	presumption [2] 12/19
30/2 49/4	11/8 11/16 11/21 14/15	13/21
parse [1] 3/24	15/10 16/15 16/17 16/24	pretty [2] 5/5 47/20
part [10] 8/21 17/22	17/18 17/23 23/17 24/7	previously [1] 9/18
19/8 39/5 39/11 39/14	33/14 34/10 34/20 35/25	primary [8] 5/8 19/15
41/5 41/5 41/14 41/22	36/6 36/8 36/11 36/14	21/23 21/24 22/20 23/16
participated [1] 15/15	37/4 37/15 37/24 38/24	23/21 24/7
particularly [2] 11/12	41/25 45/8 48/21 49/5	prior [2] 16/7 48/15
15/10	petitioner's [8] 8/23	priority [1] 14/18
parties [77]	9/21 10/16 28/9 31/24	prison [16] 8/1 8/11
parties' [14] 4/21 5/7	34/12 35/21 38/4	9/12 9/13 9/15 10/6
5/8 5/11 6/11 7/19 15/5	phone [3] 8/11 9/14	11/23 16/14 23/20 23/24
16/8 19/8 33/1 34/18	16/17	24/1 29/1 35/3 42/18
35/2 37/19 50/15	phrased [1] 24/24	45/22 49/9
party [12] 19/5 22/25	physical [16] 13/1 13/2	prison's [2] 8/4 16/16
30/9 31/1 32/8 38/17	13/9 13/23 21/23 21/24	probably [6] 14/11
38/18 39/16 40/15 41/3	22/13 22/22 23/12 23/15	32/17 39/20 45/2 46/12
42/15 50/11	23/16 23/21 24/7 28/6	51/12
	32/9 34/11	probation [5] 24/17

probation... [4] 25/2 25/21 25/24 26/1 problem [6] 18/20 25/10 25/20 44/13 46/17 48/11 problematic [1] 14/15 problems [1] 46/16 procedure [1] 26/6 proceed [3] 13/18 36/24 44/7 proceedings [4] 4/20 51/22 52/10 52/11 process [2] 3/22 44/7 professional [1] 30/9 prohibit [1] 25/9 prohibiting [1] 40/14 proper [2] 4/10 39/10 property [4] 37/2 37/6 37/11 37/16 protect [1] 15/25 protection [2] 38/4 38/10 prove [1] 23/25 proven [1] 12/24 provide [10] 3/15 3/19 16/2 17/4 26/18 29/8 36/3 36/4 38/9 50/6 provided [2] 7/3 11/20 provides [1] 24/15 providing [3] 23/9 26/3 28/23 provision [2] 23/5 38/3 provisions [2] 35/16 40/25 prudent [1] 17/5 psychiatric [3] 17/8 17/15 35/13 psychological [1] 13/24 purposes [1] 36/7 pursuant [1] 28/7 put [7] 4/14 16/11 21/2 40/16 44/5 48/18 50/18 putting [3] 21/3 22/3 30/10	R raise [1] 3/13 raised [1] 39/17 raising [1] 15/15 rather [3] 32/1 32/16 50/10 re [1] 50/4 re-approach [1] 50/4 reach [3] 14/19 17/21 23/8 reached [1] 6/22 react [1] 46/6 read [1] 5/20 ready [4] 18/15 18/16 36/24 37/1 real [2] 3/3 17/14 realistic [1] 35/9 reality [1] 35/7 realize [1] 36/25 really [10] 4/11 8/7 14/22 15/9 21/18 32/17 41/8 42/22 46/17 48/24 reason [2] 14/11 34/16 reasonable [7] 6/19 17/5 23/15 23/18 26/11 40/14 45/9 reasons [2] 28/21 35/6 rebuttable [1] 12/19 rebutted [1] 13/22 received [2] 35/24 37/8 receiving [1] 11/17 recently [1] 29/24 recess [2] 47/19 48/18 recesses [2] 28/19 47/16 recommendations [1] 31/5 record [1] 2/6 recording [2] 52/9 52/12 recordings [1] 2/4 reduced [1] 9/2 referring [1] 22/12 regard [1] 11/25 regrettable [1] 2/18 regularly [2] 9/16 15/18 reimbursement [1] 11/20 related [2] 4/20 35/21 relationship [2] 15/4 31/22 release [5] 8/4 19/23	released [15] 7/13 7/17 8/6 8/8 10/6 11/23 15/20 15/21 17/1 17/2 18/18 23/20 24/9 24/20 29/1 religious [3] 14/24 17/9 17/17 relocate [2] 24/22 27/8 relocated [1] 27/9 relocates [1] 27/16 relocation [4] 24/1 25/9 47/24 50/2 remaining [4] 11/9 11/11 37/11 37/20 remedy [1] 26/11 repeat [1] 17/11 repeating [1] 46/5 replacement [2] 6/12 6/14 Reporter [1] 52/6 repossessed [1] 6/17 request [1] 12/3 requesting [1] 11/19 require [1] 26/9 required [1] 26/24 requires [1] 21/20 rescind [1] 30/21 residence [2] 19/17 22/20 residential [3] 20/18 20/25 21/12 resolution [4] 18/19 20/4 20/24 30/25 resolve [6] 18/3 18/20 18/25 19/2 20/7 20/11 resolved [3] 9/3 30/24 33/20 resolving [5] 4/14 18/23 19/9 19/11 33/19 respondent [67] respondent's [28] 5/14 6/2 6/7 6/15 8/10 9/5 9/6 9/8 9/24 11/4 11/9 11/13 11/18 15/15 15/18 16/7 23/15 23/17 28/5 28/9 28/12 28/22 28/22 31/21 32/3 34/13 34/16 37/6 response [1] 20/22 responsibilities [3] 21/8 21/11 21/16 responsible [1] 37/22 rest [1] 50/14
Q qualified [2] 29/3 29/7 quality [1] 32/7 quandary [1] 27/5 question [8] 10/14 13/13 18/23 19/4 19/13 25/4 25/11 42/10 questions [5] 4/5 12/2 32/9 33/9 43/5		

restitution [1] 11/14 restore [1] 38/25 restraining [3] 39/5 40/14 40/19 resulting [1] 38/8 resume [4] 15/19 26/19 26/20 29/2 retains [1] 36/15 reticent [1] 42/22 retirement [3] 6/6 6/8 6/23 reunification [4] 29/3 29/8 29/12 44/9 right [23] 2/6 10/15 12/9 12/10 12/13 18/14 18/17 20/2 20/9 21/10 23/12 28/4 31/21 32/15 39/12 40/2 40/10 41/24 42/2 42/17 44/5 44/24 46/19 rights [4] 21/8 23/18 31/24 32/3 road [1] 30/19 rotate [2] 43/13 50/10 routine [1] 16/25 RPR [1] 52/22 rule [1] 39/16 ruled [2] 27/24 44/23 ruling [4] 1/11 27/25 28/3 39/3 RUSSEL [1] 1/7	scenario [1] 15/21 schedule [5] 29/10 29/10 29/11 29/12 31/18 school [6] 28/19 45/4 46/2 47/16 48/10 48/17 second [9] 1/1 5/3 11/1 12/6 13/1 18/22 28/12 34/12 48/15 section [7] 12/18 12/22 13/19 28/7 34/23 35/14 35/22 seeing [1] 7/21 seeking [1] 38/10 seen [3] 3/7 34/8 49/21 send [1] 30/16 sense [4] 4/3 8/23 22/15 36/18 sentencing [1] 6/18 separate [1] 37/4 separated [1] 5/13 September [1] 35/10 serious [2] 5/23 7/10 serve [1] 3/1 set [4] 26/6 35/14 35/21 46/13 seven [6] 5/3 5/7 10/16 31/25 46/20 48/25 several [1] 26/9 shall [1] 18/18 share [7] 12/16 13/8 16/22 17/6 35/11 35/20 50/22 shared [1] 14/19 she [20] 5/11 8/21 19/17 20/3 20/13 20/20 21/1 38/25 40/4 41/8 41/9 41/20 42/1 42/8 42/8 45/18 48/23 49/7 49/13 50/5 she's [8] 19/15 20/18 21/9 21/12 21/13 22/20 27/12 41/10 Shingle [2] 52/6 52/22 shorter [3] 47/5 48/16 49/1 Shorthand [1] 52/6 shortly [1] 6/17 should [14] 13/17 16/22 24/21 26/21 29/11 30/24 36/4 36/15 38/13 39/22 41/12 41/14 45/6 46/3 shouldn't [1] 24/20 showed [1] 49/16	similar [3] 6/9 6/25 9/14 simply [5] 9/22 17/23 35/1 35/7 35/7 since [5] 8/10 8/18 11/18 16/9 23/19 single [1] 50/11 sir [1] 34/4 sister [1] 7/15 situation [10] 3/6 13/7 16/10 19/15 20/8 20/21 21/9 21/22 22/2 31/2 situations [2] 12/21 21/14 six [5] 4/24 10/10 11/19 31/19 46/20 smooth [1] 15/20 so [59] sold [1] 11/8 sole [1] 34/11 some [9] 3/9 4/1 4/10 16/4 24/18 41/7 46/21 47/11 49/16 someone [3] 9/4 10/14 31/3 something [6] 10/14 24/12 25/2 32/21 49/23 50/12 sometime [1] 46/14 sometimes [4] 3/9 3/24 3/25 45/14 somewhat [1] 16/13 sooner [1] 8/6 sorry [2] 25/17 47/11 sort [1] 17/10 speak [1] 41/2 speakers [1] 2/3 speaking [3] 2/20 26/21 39/23 special [6] 12/21 12/23 12/24 13/1 13/2 13/16 specific [3] 15/22 39/20 46/8 specifically [5] 12/25 31/25 32/19 38/4 38/5 speculate [1] 32/21 speculative [1] 21/9 spend [2] 11/23 49/9 spring [7] 43/14 43/19 45/10 45/13 48/8 48/9 48/11 SS [1] 52/3 stability [4] 49/13
S saddle [1] 35/8 said [20] 3/23 6/24 6/25 17/15 27/6 27/6 32/25 33/25 35/6 40/4 40/4 40/24 43/15 43/20 44/14 46/10 47/14 48/14 52/11 52/14 sake [1] 15/7 Salt [1] 7/24 same [3] 3/5 26/8 31/18 San [1] 4/23 Saturday [3] 45/3 45/21 49/9 saw [1] 48/11 say [18] 3/21 8/9 15/9 15/11 17/23 22/16 25/7 25/18 30/20 31/1 32/24 42/11 43/18 44/22 44/23 45/10 46/17 50/13 saying [3] 14/4 46/22		

stability... [3] 49/17 49/17 50/7	support [9] 34/7 34/10 34/15 34/18 34/20 34/21 35/2 35/24 36/3	5/5 7/8 9/22 12/1 14/10 15/21 17/9 18/24 20/12 21/10 21/18 21/20 22/2 22/2 22/6 25/2 25/7 25/23 25/25 26/23 27/20 27/25 27/25 28/3 29/24 30/13 38/10 38/14 40/8 41/5 41/5 42/5 42/6 42/10 43/8 43/22 48/11 48/12 48/18 48/24 49/10 49/11 49/23 50/2 50/3 50/11 51/11
stalking [1] 40/16	suppose [1] 46/13	theft [1] 7/11
standard [7] 26/8 26/8 30/25 35/16 40/25 41/6 42/12	sure [10] 6/9 17/12 18/6 41/1 42/16 43/1 43/1 47/3 48/20 51/15	their [25] 2/15 3/10 3/14 5/16 9/7 11/13 12/17 14/1 14/3 14/9 14/23 15/1 15/2 15/5 15/8 15/12 22/11 31/12 31/12 32/7 33/4 35/3 35/13 37/23 42/15
stands [1] 42/17	surname [1] 38/25	them [19] 4/5 4/25 5/20 5/20 5/20 8/24 14/10 16/1 16/12 19/11 30/1 35/17 37/17 40/4 42/1 44/12 45/20 45/20 50/17
start [2] 2/16 43/13	sweet [1] 4/25	themselves [2] 18/20 18/24
starting [2] 46/6 47/12	system [3] 9/14 16/16 24/16	there [26] 4/20 8/19 11/11 12/19 13/5 13/9 16/4 22/3 24/18 26/2 29/7 29/22 30/5 34/6 35/23 37/20 38/20 39/2 39/19 39/22 40/16 41/7 42/11 46/18 49/17 50/20
state [5] 1/2 4/18 49/18 52/3 52/7	T	there's [11] 3/18 12/25 13/1 13/6 26/6 26/7 26/9 29/20 39/16 41/12 42/20
stated [2] 9/22 28/21	tailor [1] 31/21	thereof [1] 52/15
statement [2] 22/8 30/21	tailored [1] 32/20	these [26] 3/13 3/23 4/5 8/19 9/17 10/12 11/2 12/22 12/23 13/13 14/1 14/7 14/7 14/17 14/22 14/23 16/18 17/3 18/24 22/3 28/24 31/16 33/1 33/19 44/6 44/7
statute [6] 19/14 21/20 22/6 22/14 47/24 50/3	tailoring [1] 14/14	they'll [1] 30/6
statutes [1] 22/5	take [11] 2/23 4/5 10/12 18/8 20/15 25/3 35/16 35/18 43/23 45/7 45/12	they're [6] 18/12 18/24 39/10 42/22 45/4 48/4
statutory [1] 23/13	taken [5] 2/12 3/2 8/17 41/10 49/14	they've [1] 43/22
steel [1] 50/19	taking [3] 44/12 44/15 49/4	thing [3] 26/1 40/3 45/6
steered [1] 48/12	talk [4] 12/8 13/5 22/22 43/24	things [9] 3/12 15/11
steps [2] 18/25 19/1	talked [1] 36/25	
still [4] 8/3 18/8 20/3 38/24	talking [1] 3/6	
stipulation [1] 40/13	tax [9] 10/10 36/1 36/2 36/6 36/7 37/25 38/5 38/7 38/13	
stopped [1] 5/10	tell [2] 5/1 18/10	
strain [1] 30/10	temporarily [2] 7/13 7/17	
strike [1] 48/15	term [1] 23/4	
strong [1] 5/20	terms [1] 16/23	
structure [4] 3/15 16/2 23/9 50/21	testified [4] 6/24 8/5 8/8 27/17	
subject [4] 23/17 23/22 40/24 52/11	testimony [10] 5/1 5/12 6/13 7/3 7/19 8/19 9/25 15/6 44/11 44/13	
subjects [1] 13/13	than [10] 4/4 9/4 10/1 24/6 27/23 31/1 31/14 32/16 32/25 50/10	
submitted [1] 4/16	thank [13] 18/16 28/1 30/3 31/7 33/3 33/6 38/21 38/22 43/10 50/25 51/18 51/19 51/20	
subsection [3] 12/18 13/19 34/24	Thanksgiving [10] 7/22 28/19 43/13 43/16 45/1 46/1 46/23 47/15 48/8 48/16	
subsequent [1] 24/1	that [326]	
substantial [4] 26/10 36/17 46/25 49/3		
succeeded [1] 3/3		
such [5] 13/12 19/5 24/14 24/21 48/23		
sufficient [2] 16/18 42/14		
suggest [1] 46/1		
suggestion [3] 17/13 33/16 44/5		
summer [5] 28/18 43/16 45/13 46/10 47/13		
summertime [1] 33/12		
Sunday [3] 45/3 45/21 49/9		
supervision [2] 7/15		

-	7/1	12/18 13/18 13/19 25/24
things... [7] 21/15	toward [1] 19/11	26/8 30/24 34/14 47/24
27/5 33/9 33/19 40/21	transcribed [2] 52/9	understand [9] 2/22
44/15 50/18	52/10	12/8 18/9 25/20 26/17
think [75]	Transcriber's [1] 2/3	33/23 42/19 50/8 52/12
thinking [1] 45/2	transcript [4] 18/8	Understood [3] 18/9
third [6] 5/3 13/9 19/2	51/6 51/8 52/8	23/6 23/7
28/21 30/9 41/4	transcription [1] 52/11	undue [1] 30/10
Thirty [7] 10/25 11/5	transition [1] 15/21	unduly [1] 14/15
11/8 11/11 11/12 11/15	transparent [1] 6/22	Uniform [1] 4/19
11/19	transportation [1]	unintelligible [2]
Thirty-five [1] 11/15	28/23	20/15 41/13
Thirty-four [1] 11/12	travel [3] 26/1 46/18	unknown [1] 8/3
Thirty-one [1] 11/5	49/1	unless [4] 19/3 20/7
Thirty-six [1] 11/19	trial [2] 1/11 2/9	39/15 39/15
Thirty-three [1] 11/11	tried [1] 50/16	unquote [1] 12/23
Thirty-two [1] 11/8	true [5] 16/1 20/12	unreasonable [3] 13/3
this [70]	47/21 47/22 52/10	13/14 13/14
Thomas [1] 29/16	try [3] 15/11 20/6 33/9	unresolved [1] 19/6
those [14] 7/1 10/8	trying [12] 3/15 17/13	until [5] 5/13 7/15
16/21 17/11 20/19 21/14	17/20 18/20 21/22 22/2	16/25 46/2 51/7
29/20 35/16 35/18 39/11	30/1 35/8 45/5 45/8	up [6] 10/2 20/14 26/15
41/19 41/21 41/25 42/13	46/15 49/2	27/16 41/11 51/13
though [4] 6/9 12/7	Tuesday [1] 45/22	urge [1] 32/22
18/13 47/19	turn [1] 44/21	us [1] 39/13
thought [7] 5/4 6/16	Twenty [7] 9/6 9/12	use [1] 18/18
33/20 35/17 41/11 43/18	9/18 10/10 10/16 10/19	used [3] 6/14 18/1 18/7
51/6	10/22	using [2] 9/22 34/11
thoughts [1] 32/12	Twenty-eight [1] 10/19	UT [1] 52/22
three [10] 4/18 4/24	Twenty-nine [1] 10/22	UTAH [21] 1/2 2/1 4/18
4/25 8/12 9/18 11/11	Twenty-one [1] 9/6	7/24 8/18 12/18 13/19
14/1 14/8 45/1 47/10	Twenty-seven [1] 10/16	23/13 25/25 26/7 26/9
through [4] 3/9 10/2	Twenty-six [1] 10/10	28/7 28/9 28/14 34/23
16/16 34/24	Twenty-three [1] 9/18	35/14 35/21 49/18 52/3
throughout [1] 9/17	Twenty-two [1] 9/12	52/7 52/16
Thursday [2] 45/3 45/19	twice [3] 8/13 31/11	
Thus [1] 7/7	31/15	V
tie [2] 20/23 50/15	two [19] 4/16 6/24 7/1	value [4] 6/11 6/14 7/2
tiebreaker [1] 21/18	9/12 11/8 22/17 22/18	37/7
tiebreaking [10] 17/19	23/1 28/16 28/17 35/17	values [1] 14/24
17/24 18/1 19/18 20/3	43/15 46/8 46/10 47/2	van [2] 6/12 6/16
20/14 20/20 21/1 21/13	47/9 47/13 47/20 49/1	vehicle [1] 6/14
21/25	two-hour [1] 35/17	venue [1] 4/9
time [58]	tying [1] 46/22	versus [2] 2/7 32/12
times [1] 49/23	type [2] 35/17 35/18	very [9] 3/3 3/21 4/8
title [2] 4/15 11/6		11/14 20/19 31/10 32/13
today [3] 2/9 2/10	U	32/19 51/18
44/14	U.S [2] 9/13 16/17	view [2] 41/8 52/16
together [4] 3/4 3/14	UCCJEA [1] 4/20	violence [1] 13/1
4/25 23/2	Uh [2] 45/17 46/11	Virginia [1] 7/24
told [2] 2/21 2/22	Uh-huh [2] 45/17 46/11	visit [2] 44/12 44/19
tomorrow [1] 2/9	unable [1] 18/24	visitation [2] 28/17
too [5] 8/14 21/23	uncontroverted [1] 6/3	32/1
35/17 43/4 49/4		

visits [6] 8/20 8/22 8/24 8/24 28/16 46/8	26/25 27/2 27/4 27/11 27/24 29/24 30/20 30/21 32/18 33/17 39/18 40/3 41/20 43/24 44/20 44/25 45/12 46/9 46/19 49/6 49/20 51/6	6/25
vote [1] 20/20	well-aligned [1] 14/24	within [6] 17/5 23/23 23/24 27/8 48/9 50/21
vs [1] 1/6	well-being [1] 9/10	without [3] 21/3 21/17 49/4
W	went [1] 8/1	won't [6] 3/5 13/14 14/14 30/6 30/7 41/2
Waddell [1] 38/25	what's [5] 3/19 24/8 26/23 31/4 44/2	wonderful [2] 3/12 3/13
Waddell's [1] 6/13	whatever [1] 40/18	word [1] 24/14
wait [2] 35/17 51/7	where [19] 11/16 17/4 21/2 21/8 23/19 24/4 24/19 24/22 26/2 26/23 27/10 27/12 35/3 37/12 42/18 44/10 49/22 50/16 50/17	worded [1] 38/11
waiting [1] 18/5	whether [3] 27/16 29/9 41/11	words [10] 17/22 23/3 24/3 24/6 24/15 27/15 31/13 40/15 40/18 48/22
want [31] 3/11 4/14 4/15 15/9 16/11 17/23 21/1 21/22 22/4 24/3 26/18 29/25 31/3 35/15 38/2 39/15 40/12 40/16 40/18 42/3 42/25 43/1 44/18 45/7 48/20 48/22 50/15 50/19 50/20 51/7 51/10	which [5] 3/18 6/13 6/16 7/2 45/21	work [15] 3/4 3/14 4/2 9/25 10/8 16/10 23/2 35/21 39/14 43/25 49/22 50/14 50/16 50/17 50/21
wants [3] 15/6 38/24 50/12	while [16] 7/17 8/20 9/2 9/12 10/1 10/1 10/11 11/22 13/9 15/23 16/13 17/18 28/16 31/22 32/4 36/2	work-related [1] 35/21
was [64]	who [9] 5/6 5/19 8/8 17/2 29/8 29/18 31/3 42/20 44/11	workable [1] 35/9
wasn't [4] 6/9 45/5 46/15 47/25	who's [2] 3/7 51/2	worked [3] 33/17 40/23 49/24
way [8] 3/1 4/2 4/3 15/11 32/2 33/1 48/23 50/2	whole [1] 47/19	working [3] 5/10 5/21 10/8
we'd [3] 35/7 40/20 41/18	will [48] 2/24 2/25 3/18 3/19 8/3 8/15 9/2 9/3 9/9 10/6 10/7 10/12 11/25 14/1 14/22 15/1 15/13 15/19 15/20 16/2 16/5 16/10 17/3 18/7 18/19 18/22 19/2 23/20 23/25 24/18 28/17 28/18 29/8 29/12 29/18 30/7 30/25 31/3 31/16 32/6 32/16 40/13 43/7 44/19 47/15 48/1 51/17 51/21	works [2] 49/6 50/3
we'll [5] 40/8 43/24 50/13 51/5 51/12	willing [1] 27/22	world [1] 30/5
we're [7] 4/12 12/12 21/16 30/9 30/10 30/19 47/8	willingness [2] 9/7 15/24	worst [2] 3/10 18/13
we've [1] 36/25	win [1] 18/12	wouldn't [2] 46/25 47/2
WEBER [1] 52/4	winter [13] 28/19 43/19 43/20 43/21 44/2 45/8 45/10 46/15 47/15 47/19 48/7 48/16 48/17	writing [1] 12/9
website [1] 8/4	wish [2] 3/22 43/11	wrote [1] 39/24
Wednesday [3] 45/3 45/16 45/19		Y
Wednesday's [1] 45/23		year [24] 7/22 8/18 10/2 23/23 25/1 25/14 27/8 27/23 28/16 28/20 44/21 45/8 45/12 45/15 45/15 48/9 48/18 48/22 48/23 49/7 49/16 49/18 50/5 50/11
week [8] 7/20 8/13 9/23 31/11 31/15 45/25 46/3 49/11		year's [5] 45/23 47/9 47/9 49/10 49/10
week's [1] 48/17		years [2] 25/22 30/19
weekly [1] 7/18		yesterday [1] 2/10
weeks [7] 28/18 43/15 46/10 47/3 47/13 47/20 49/2		yet [1] 27/1
welcome [2] 4/1 35/15		you [65]
welfare [1] 14/18		you'd [2] 12/3 46/7
well [36] 9/10 14/24 15/13 17/23 19/22 21/4 21/20 24/24 24/25 25/1		you'll [5] 2/19 3/14 3/16 4/1 14/13
		you're [7] 3/6 4/1 18/14 35/15 36/24 44/10 51/16
		you've [5] 2/21 2/22 3/2 3/12 50/3
		young [3] 14/1 31/9

-
young... [1] 31/13
your [45] 2/25 3/1 3/12
3/16 3/20 4/5 12/4 12/6
18/16 19/13 20/17 21/7
23/6 24/23 25/18 26/2
26/13 30/12 30/14 31/7
32/11 33/3 33/6 38/10
38/22 41/7 43/2 43/8
43/10 43/11 43/12 44/1
44/4 44/22 46/4 47/7
47/11 48/6 49/12 50/1
50/3 50/4 51/5 51/18
51/19